

VETERANS' COMPENSATION PROGRAM

HEARING
BEFORE THE
SUBCOMMITTEE ON
COMPENSATION, PENSION, AND INSURANCE
OF THE
COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES
NINETY-SEVENTH CONGRESS
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VETERANS' COMPENSATION PROGRAM

THURSDAY, APRIL 22, 1982

HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9 a.m., in room 334, the Cannon House Office Building, Hon. Sam B. Hall, Jr. (chairman of the subcommittee), presiding.

Members present: Representatives Hall, Wylie, Smith of Alabama, Smith of New Jersey, Siljander, and Applegate.

OPENING STATEMENT OF CHAIRMAN HALL

Mr. HALL. The subcommittee will be in order.

This morning we meet to hear testimony on legislation affecting the compensation program of the Veterans' Administration.

The Administration has proposed an 8.1-percent cost-of-living increase in service-connected benefits effective October 1, 1982. The proposal also contains several of the President's legislative cost-savings proposals.

The full committee previously addressed these cost savings in its budget markup on March 10. The members rejected the cost savers which would adversely impact upon service-connected veterans. Frankly, I think it is wrong that the administration tries to balance the budget at the expense of service-connected veterans, the majority of whom were disabled in combat, while at the same time providing huge tax breaks for multibillion dollar corporations.

While these cost savers we will hear about today have already been addressed by this committee, and our sentiments are clearly known, these proposals are still pending before the Budget Committee in Congress.

This morning we will hear from the VA as well as a number of other witnesses on the proposed cost-of-living increase and the cost-savings proposals.

We will also be considering other bills which should have minimal cost but will fine-tune the program.

Our first witness this morning will be Ms. Dorothy Starbuck, chief benefits director of the Veterans' Administration.

Ms. Starbuck, if you will introduce those accompanying you, you may proceed. If you care to summarize; your entire statement will, without objection, be made a part of the record. As usual, we are always happy to have you before this committee.

**STATEMENT OF DOROTHY STARBUCK, CHIEF BENEFITS
DIRECTOR, VETERANS' ADMINISTRATION**

Ms. STARBUCK. Thank you very much, Mr. Chairman, and good morning. Accompanying me this morning is Mr. Max Woodall who is the Director of the Compensation and Pension Services; Mr. Herbert Mars, the Assistant Director of Compensation and Pension Service; and Mr. Jack Thompson of our General Counsel's Office.

Mr. Chairman, I would like to summarize my statement and you have agreed to accept it as it was submitted for the record.

We are very pleased, Mr. Chairman, to be here this morning to discuss the proposed legislation that would affect the programs that are administered by the Department of Veterans' Benefits.

First I will comment on H.R. 5709 which was introduced at our request by Chairman Montgomery and which the Administration strongly favors. This bill proposes both a cost-of-living increase in compensation and DIC rates as well, as cost saving improvements in the compensation and pension programs.

The basic rates of compensation, DIC, and annual clothing allowance would be increased by a proposed level of 8.1 percent. The Veterans' Administration has consistently recommended cost-of-living increases to assure that our programs are responsive to changing economic needs.

The percentage of increase recommended at 8.1 is, or was, based on estimates which were existent at the time the proposal was submitted and matches that projected for the social security and pension programs.

As we have in the past, Mr. Chairman, we will support an increase in compensation rates, effective October 1, 1982, in the same percentage as the forthcoming adjustment in social security benefits.

The fiscal year 1983 costs would be \$771 million if the 8.1 percentage holds firm.

The first cost-saving proposal that we have made would amend section 3104 of title 38 relating to the prohibition against duplication of benefits. This would, basically, affect veterans whose disabilities are rated from 60 to 90 percent and who are unemployable as a result of his or her service-connected disability. They are paid at the 100-percent rate.

We are concerned that persons are concurrently receiving other Federal benefits for disability or retirement purposes. Our proposal would limit compensation based on the veterans' schedular rating or the amount payable on the basis of unemployability, to be reduced by the amount of other Federal benefits for any month, whichever would be the greater amount.

The other Federal benefits we are considering would include social security, Federal disability and retirement programs such as the black lung program, railroad retirement, and civil service.

Veterans receiving such other benefits do so because of individual circumstances which remove them from the job market. We do not believe that duplication of benefits is warranted, particularly when Federal budgetary restraints are so critical. The American taxpayer should not be expected to support the pyramiding of benefits based upon a person being unemployable.

We feel that we still recognize the commitments of this country to service-disabled veterans. There is no intent in this legislation to disturb schedular benefit payment rates which would remain. We are proposing an effective date for this change of October 1983, with fiscal year 1984 savings estimated at \$282.5 million.

We are also proposing amendment of section 315 of title 38 to change from 30 to 50 percent the level of disability required for payment of additional compensation for dependents. In 1978 the level was lowered from 50 to 30 percent over the objections of this agency.

We continue to believe that this is an unwarranted liberalization for veterans whose earning capacities are not seriously impaired. Acceptance of this proposal would realize fiscal year 1983 savings of \$135.3 million.

We are proposing to add a new section 3011 to chapter 51 of title 38 to provide for payment of compensation, DIC, and pension benefits on the first day of the month following the month in which the award is effective.

We propose this change to be effective July 1, 1982 and estimate that cost savings in fiscal year 1982 would be \$3.4 million and \$28.8 million in fiscal year 1983.

Section 302 of this bill would, effective October 1, 1982, amend section 3012 of title 38 to affect a reduction in benefits at the end of the month in which dependency changes occur rather than at the end of the year as is the current rule. Savings on this portion of the bill in fiscal year 1983 would amount to approximately \$3.2 million.

We ask for amendment of section 3020 of title 38 to authorize payment of pension benefits except protected old law pensions in rounded dollar amounts. We propose this provision be effective July 1, 1982. It would save an estimated \$1.4 million in fiscal year 1982 and \$10.8 million in fiscal year 1983.

Section 304 of the bill would amend section 501 of title 38 for the improved pension program to define a child as a dependent up to the age of 19 if he or she is attending secondary school but not to include children at that age as college students.

This, of course, would not affect the helpless child. The eligibility of a child currently eligible would be protected during uninterrupted college attendance, subject to certain limitations. Benefits would not be paid for summer months, May through August, beginning in 1982. That portion of pension attributable to a dependent child or the benefit paid in the child's own right, would under this proposal, be held to the August 1981 level, reduced by 25 percent for the school year of 1982; 50 percent for the school year 1983; and 75 percent for the school year 1984-85. No benefits would be payable after July 1985.

These provisions would apply to recipients under the improved pension program and those protected under section 306(a) of Public Law 95-588.

The amendment to title 38 would be effective October 1, 1982, and the other limitations we propose to take effect upon enactment of the legislation. Savings are estimated at approximately \$13.4 million in fiscal year 1983.

I would turn now, Mr. Chairman, to the other bills on which you asked the agency to comment.

First, H.R. 4308 would extend from 1 to 7 years the period following separation from service during which progressive muscular atrophy or amyotrophic lateral sclerosis is manifested to a degree of 10 percent or more to be service connected. Amyotrophic lateral sclerosis occurs generally in the older age group and is diagnosed within 6 months of the initial symptoms.

Progressive muscular atrophy is not a recognized disease entity and would not be the basis for a finding of service connection.

We believe there is no scientific justification for extending the present presumptive period. We believe that existing laws and regulations permit findings of service connection in very deserving cases.

We have no basis for estimating costs of this proposal, but since these are relatively rare disorders, costs in any year would not be significant.

H.R. 5144 would amend section 101(22) of title 38 on the definition of active duty for training to qualify certain Reserve Officers' Training Corps members for compensation benefits. The agency's current interpretation of active duty for training permits payment of compensation if the ROTC member has actually enlisted in the Reserves and suffers from a line of duty disability during annual training duty. For this group of individuals the proposal is not required. For other civilian members of the ROTC not committed by enlistment in the Reserves, Federal employee compensation is payable in the event of injury while on active duty training.

We believe that ROTC members are adequately covered with respect to injury and so oppose this measure as placing the Veterans' Administration in the position of compensating individuals who have acquired no military obligation.

H.R. 6040 would expand eligibility for burial benefits in non-service-connected deaths. Payment of up to \$300 would be payable in cases in which the body of an indigent veteran is held unclaimed by a State or local authority. Our experience with the burial of indigent veterans does not suggest that such a problem exists nationally, that, is of the magnitude that would warrant remedial legislation.

Administration of the provisions of this proposed law would be burdensome and disproportionately costly and so we oppose this enactment. The benefit cost to be added would be less than \$1 million and the administrative costs associated with this would be less than \$100,000 for any year.

H.R. 6039 would expand eligibility for benefits at DIC rates under section 410(b) of title 38 to provide benefits to survivors of veterans whose total ratings were in effect less than the current 10- or 5-year period because of VA error. Because a veteran always has the opportunity to call attention to any error, real or perceived, within a 10-year period or the 5, we do not favor enactment even though insignificant benefit costs would result in any year.

H.R. 6041 would require VA to furnish burial flags for persons buried in Arlington National Cemetery or in a national cemetery under the jurisdiction of the Veterans' Administration.

We believe our authority to furnish burial flags should continue to be limited to burial of veterans and burial of those who die while on active duty and should not be expanded to include non-veterans.

We certainly would have no objection to a continuation of the Administrator's authority to make exception in individual cases.

Benefit and administrative costs for this proposal would likewise be insignificant.

You asked also, Mr. Chairman, that we comment on a draft proposal to require offset of tort judgments or settlements from VA benefits. This proposal would introduce the concept of disentitlement for service-connected disability or death benefits because of the receipt of income in the form of tort damages from a source outside the Government.

Because there are a myriad of other benefits which flow from a finding of service connection, such as medical care; vocational rehabilitation, or educational assistance for family members, that could conceivably become a part of a tort settlement, we feel this issue deserves very careful study and review if it is to be subsequently considered.

We will be pleased to provide to the committee further information and to work with the subcommittee staff on this proposal.

Mr. Chairman, this concludes a brief of a rather lengthy statement and we will be very happy to respond to your questions.

[The prepared statement of Ms. Starbuck appears on p. 57.]

Mr. HALL. Thank you very much, Ms. Starbuck.

I am looking at the list of people who are testifying here today and we have a huge number of people, probably 15 or more. I am going to dispense with questions at this time but we will have questions to submit to you, which we would appreciate your answering and returning back at your earliest convenience with reference to your position on the bill that you have discussed.¹

We thank you, as usual, for your very fine testimony.

Ms. STARBUCK. Thank you, Mr. Chairman.

Mr. HALL. I note that we have, as I indicated, a large number of witnesses here today. I think it goes without saying that some of the administration's cost savers have struck a nerve and the witnesses we will hear from now will let us know just how raw that nerve may be.

At this point I want to say that some Members of Congress have expressed their desire to submit statements on the compensation bills to be included in the hearing record. Without objection it is so ordered and the record will be kept open for 1 week from today for submission of these statements.

Our next witness will be Mr. Gabriel Brinsky, national service and legislative director of the AMVETS.

As I indicated before, Mr. Brinsky, because of the number of witnesses today I would like to ask you and the other witnesses to limit your oral testimony to 5 minutes. Your complete statement will be entered in the record.

¹See p. 75.

STATEMENT OF GABRIEL P. BRINSKY, AMVETS NATIONAL
SERVICE AND LEGISLATIVE DIRECTOR

Mr. BRINSKY. Good morning, Mr. Chairman and members of the committee.

AMVETS is appreciative of this opportunity to express its views concerning the various bills which will be considered by the subcommittee this morning. As requested, my oral testimony will be very limited and we do request that the complete statement be incorporated into the record.

We favor the enactment of the following bills:

H.R. 5144 which would amend title 38 to make members of Senior Reserve Officers' Training Corps programs who are injured during summer military camp eligible for compensation benefits administered by the Veterans' Administration.

H.R. 5874 which would amend title 38 to prevent relatives other than spouses, children, and dependent parents from inheriting any part of the estate of a mentally incompetent veteran that was accumulated from benefits provided under laws administered by the Veterans' Administration.

H.R. 6039 which would amend title 38 to correct the technical error with respect to entitlement to dependency and indemnity compensation.

H.R. 6040 which would amend title 38 to provide eligibility for burial benefits from the Veterans' Administration for certain veterans whose remains are unclaimed.

H.R. 6041 which would amend title 38 to authorize the Administrator of Veterans' Affairs to furnish a burial flag to the next of kin of persons who are buried in Arlington National Cemetery or in national cemeteries administered by the Veterans' Administration but who are not currently eligible for burial flags.

We do not favor enactment of H.R. 4308 which would amend title 38 to provide a 7-year presumptive period for progressive muscular atrophy or amyotrophic lateral sclerosis. In our opinion, these neurological diseases are of such a nature that the presumption of 7 years would be unwarranted medically.

Except for title I which relates to increases in compensation and dependency and indemnity compensation rates, we do not favor any of the remaining provisions of H.R. 5709. Particularly, we are of the view that an unemployable rated service connected veteran should not have his compensation which he has earned by reason of service to his country, reduced or adjusted by the amount of other Federal benefits which he may be entitled to receive.

This, Mr. Chairman, briefly sets forth our views on the pending legislation. Our full statement goes into greater depth concerning each of the bills under consideration.

Thank you.

Mr. HALL. Thank you, Mr. Brinsky. As you indicated, your statement will be made a part of this record.

Thank you, very much.

[The prepared statement of Mr. Brinsky appears on page 85.]

Mr. HALL. Mr. Smith, the gentleman from Alabama, do you have any questions? I did not see you here a moment ago. We would be glad to have them at this time.

Mr. SMITH of Alabama. No questions, Mr. Chairman.

Mr. HALL. Mr. Max Beilke, legislative counsel for the National Association for Uniformed Services.

**STATEMENT OF MAX J. BEILKE, LEGISLATIVE COUNSEL,
NATIONAL ASSOCIATION FOR UNIFORMED SERVICES**

Mr. BEILKE. Good morning, Mr. Chairman.

It is a pleasure to appear once again before your committee. I would like to make a few additional comments to my written statement which has already been submitted for the record.

The first is on H.R. 4308. Amyotrophic lateral sclerosis contains many mysteries. Medical science has a lot to learn about this crippling disease. Not many doctors are familiar with, or have had previous experience, which would allow them to recognize the symptoms of ALS in its early stages, therefore, it is easy to understand why many times ALS is incorrectly diagnosed or completely overlooked.

Initially patients are misdiagnosed as having a pinched nerve and aging or degeneration of spinal nerves or a myriad of other incorrect diagnosis which the doctor may think it is. In only a few cases, by a few experts, has ALS been initially and quickly diagnosed as ALS. I don't believe medical science knows how long ALS lies dormant in the human body before its symptoms appear and are recognized.

Adding to the difficulty of early detection is the fact that it does not always appear initially in the same part of the body in all victims. It does not progress at the same rate of speed in all victims or even within one victim and it can go into unpredictable periods of remission.

Life expectancy after diagnosis is also varied and unpredictable. So little is known about ALS that one can easily understand why so few people have even heard of the disease or recognize the letters, ALS.

It is only in the past few years that Congress has appropriated funds to support ALS research. Prior to that research was funded mainly through private donations. ALS is not, however, a new disease. I would like to remind this committee that Lou Gehrig, one of this Nation's greatest baseball players, retired from baseball in 1939 and died in 1941 at the age of 38 from ALS.

I have with me today the latest edition of ALSSOA the publication of the Amyotrophic Lateral Sclerosis Society of America which I would like to give to this committee's members to read.

For those on this committee who are unfamiliar with ALS, I am certain this publication will be helpful.

I cannot state strongly enough my support of H.R. 4308.

On H.R. 5709, while NAUS supports the increase in DIC payments, we continue to urge a revision in the criteria upon which the amount of DIC is based. NAUS believes that more than military grade should be used when determining the DIC benefit payment.

We also continue to support the remarriage of DIC recipients after age 60 without loss of DIC eligibility.

NAUS does not support reduction in any Veterans' Administration compensation entitlement due to additional benefits payable from some other source or agency. We feel that if the VA entitlement is awarded as a primary benefit, secondary benefits from other sources should not in any way diminish or delete the title 38 compensation benefit.

Additionally, NAUS does not support any reduction in educational benefits for surviving children of veterans which are currently authorized under title 38.

Mr. Chairman, this concludes my short statement. I appreciate the opportunity of testifying and we thank you and your members for addressing these important issues.

Mr. HALL. Thank you, Mr. Beilke. Your entire statement will be made a part of the record.

[The prepared statement of Mr. Beilke appears on page 90.]

Mr. HALL. Mr. Heilman, our next witness, is not able to be here but in his place is Mr. Butch Joeckel, assistant national legislative director, Disabled American Veterans.

**STATEMENT OF CHARLES E. JOECKEL, ASSISTANT NATIONAL
LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS**

Mr. JOECKEL. Good morning, Mr. Chairman. I am sure that if Rick could have been here this morning, he would have been. I am sure he wouldn't want to miss the opportunity to testify on these cost saving proposals.

In summary of his statement, Mr. Chairman, I think that our position regarding the cost-of-living increase in H.R. 5709 is well documented in the statement and I will not touch on that.

I would point out that the DAV is opposed to the cost saving measures which would reduce benefits for service connected veterans contained in title 2 and 3 of the bill.

I would like, at this time Mr. Chairman, to point out that—and it is not mentioned in our statement—it is a fact that if veterans had the opportunity to use money that they earned to buy private insurance policies, then certainly there would not be an offset but most veterans are required to come under the Social Security Administration and we see no reason just because it is a program funded by the Federal Government that it should offset any VA disability compensation payment.

In addition, veterans who served in the military are of course required to pay into social security. Now that they are out of the service and totally disabled, we would offset their paid-into benefit.

We are adamantly opposed to the provisions which would eliminate dependency allowances for veterans rated 30 and 40 percent disabled. It is kind of ironic, just 4 years ago that was an initiative of this subcommittee and now we are talking about eliminating the benefit.

We favor the enactment of H.R. 5144 and believe it is a logical extension to pay the veterans themselves for disabilities incurred while in ROTC training. Currently we do pay for death incurred during this training to the widows and orphans.

We support the enactment of H.R. 6041, to furnish burial flags to the next of kin of persons who are buried in Arlington National Cemetery.

We are pleased to see that the subcommittee has given serious consideration to H.R. 6039 to correct a small inequity that occurred in the enactment of Public Law 95-479.

Finally, Mr. Chairman, I would like to comment on the proposed draft bill on which we were asked to present our views on this measure. This measure would require that payments of disability and compensation, DIC and pension be offset by tort claim settlement.

We would like to point out, Mr. Chairman, as you probably know as an attorney, most disability tort claim settlements are reached and do take into account an individual's future benefits that he might receive, such as from the Veterans' Administration and from the Social Security Administration.

In this sense, the benefits that he might receive from the VA have already been offset. To do so again and to collect, based on the fact that he had an outside settlement is, we think, inequitable. As we see the bill it would place a means test on the compensation program and we would be opposed to it.

That concludes my statement. Thank you for allowing us to appear.

[The prepared statement of the DAV appears on p. 92.]

Mr. HALL. I must ask just one question, in view of your last comment. Is your organization taking the position that if a person has a third-party action and recovers a judgment, say, \$2 or \$3 million, that that person should not have that judgment offset by any moneys that the Government may have paid for hospitalization or medical bills prior to the date of the judgement?

Mr. JOECKEL. I think we would view the reimbursement of the medical expenses in a different fashion than we would this particular bill, which would offset the actual compensation benefits.

The reimbursement to the VA for medical costs would be one that I would rather study than comment on here.

Mr. HALL. All right. I didn't mean to put you on the spot but I would like to have the benefit of your organization's thinking with reference to the question, at your convenience.

Mr. JOECKEL. I would be delighted to give you that, Mr. Chairman.

Mr. HALL. Thank you, and I do appreciate your filling in for Mr. Heilman today.

The next witness is Mrs. Rosemary Locke, legislative chairman for the National Military Wives Association.

STATEMENT OF ROSEMARY LOCKE, LEGISLATIVE CHAIRMAN, NATIONAL MILITARY WIVES ASSOCIATION

Mrs. LOCKE. Good morning, Mr. Chairman and members of the committee. Mrs. Kathy Gravino will present our statement today.

Mrs. GRAVINO. Good morning, Mr. Chairman and members of the committee. The National Military Wives Association welcomes the opportunity to speak on the dependency and indemnity compensation program [DIC].

Since 1957 the benefits available through the dependency and indemnity compensation program have helped to alleviate the hardships facing the survivors and members of the uniformed services.

Today DIC assists widows from all parts of the military community to meet the basic needs of their families. Equally important, DIC and its related survivor benefits program provide reassurance to active duty personnel in all stages of their military careers so that in the event of tragedy their commitment to the military service will be matched by the commitment of the Government to their survivors.

Military service is truly more than just a job. It is a way of life for military families. Frequent separations, mobility, interrupted education for children, restricted employment for wives, and hazardous and stressful duty assignments during peacetime as well as during war are accepted parts of military family life.

All too often military families pay the ultimate price in the death or disablement from service-connected causes of the service member. The tragic deaths and injuries resulting from a routine training exercise of soldiers of the 82d Airborne Division earlier this month are only one example.

In peacetime as in times of war, the military remains a hazardous calling.

The unique nature of military service creates unique needs for military families. The mobility of military life restricts employment opportunities for military wives. Moving on an average of every 2½ years and starting over again and again in entry-level positions, they are unlikely to qualify for their own retirement plan or long-term benefit programs.

Upon the loss of the service member, these family members are less likely than their civilian counterparts to have financial security available from their own employment. Many widows who have never had the opportunity to develop marketable skills are thrown into the labor market for the first time under conditions of family hardship and emergency.

A strong DIC program is imperative if the standard of living of these families is to remain at acceptable levels. In addition, the average military widow receiving DIC benefits is slightly over 60 years old, according to a Veterans' Affairs study done in 1978.

Older widows have even greater difficulty surviving financially as inflation eats away at the value of the various fixed level benefits with which they make ends meet. Income through employment is less likely to be an option for these women. A DIC that adequately reflects the changing economic times and keeps pace with inflation is a necessity.

Service members must be reassured that their dedication to the needs of the service and their sacrifices will be matched by an equal concern for their survivors. Security is an important issue for uniformed personnel and financial protection for family members in a factor in the career decision.

In considering the impact of programs like DIC on retention, it is important to remember that most military personnel are married and that many studies show that family considerations are a determining factor in the decision of the service member to make a career commitment.

The wives, widows, and family members who comprise the National Military Wives Association share the tradition of patriotism and commitment to the military. We are proud to support our spouses as they carry out the military missions of our country.

Programs such as DIC must provide adequate protection for widows and surviving dependent children that is consistent with protection available for other Federal employees.

The National Military Wives Association is deeply concerned with cuts in educational benefits for surviving family members that have occurred in the social security program this past year. Many widows with small children, trusting that those benefits would be there have depleted their limited family resources on other basic family needs and now, suddenly, the promised support is disappearing. Not having planned for this loss of assistance, some families may have difficulty financing the education they want.

Other service families have seen this break in faith with alarm. We recognize the consistent support that this committee has given to military widows and surviving dependent children and we request your consideration of the sad situation in which these families find themselves.

Legislation restoring these benefits or adjusting the amount of educational assistance available from other sources upward will insure that education is available for the survivors of military personnel.

The National Military Wives Association continues to request that you consider legislation that would enable military widows to remarry after the age of 60 without forfeiting DIC benefits and consideration of the effects of loss of DIC for some widows who live lonely lives or accept new life styles which are morally offensive to them.

Finally, the National Military Wives Association supports the 8.1 percent cost of living increase as a necessary step to alleviate the financial strain imposed by inflation.

Thank you very much for the opportunity to comment on DIC.

[The prepared statement of the National Military Wives Association appears on p. 107.]

Mr. HALL. Mrs. Locke, we thank you for your statement.

We have with us Mr. Mark Siljander, the gentleman from Michigan, and Mr. Albert Lee Smith, Jr., the distinguished gentleman from Alabama. I believe Mr. Douglas Applegate from Ohio had an engagement he had to attend at 9:40.

As I have indicated previously, before Mr. Siljander arrived, we are not asking any questions due to the lengthy number of witnesses, however, if you two gentlemen have anything you would like to ask of any of these witnesses, feel perfectly free to do so.

Thank you, very much.

Mrs. LOCKE. Thank you.

Mr. HALL. Our next witness will be Ms. Muriel Parkhurst, administrative aide to the Veterans of World War I.

STATEMENT OF MURIEL PARKHURST, ADMINISTRATIVE AIDE,
VETERANS OF WORLD WAR I

Ms. PARKHURST. Good morning. In the absence of National Commander Roché, I will read part of his testimony.

Mr. Chairman and members of this distinguished committee, time and again the subcommittee has proven itself to be a friend and a champion of the Veterans of World War I, however, in view of the strong desire on the part of the administration to hold down Federal spending, the stiff competition that exists for available Federal dollars is a difficult thing to determine.

In checking the VA report in March 1982 on service-connected disability compensation, we note that an estimated total of 421,000 veterans of World War I still remain but only 23,419 or less than 6 percent, are drawing compensation for service-connected disabilities and of that figure, 23,419, only 3,504 or about 15 percent are drawing total disability.

The point we wish to make is that if being unemployable is a factor in determining compensation, and we think it should be, then age should be a factor because it is directly related to employability.

It seems that a careful appraisal of the present rates as they pertain to percent of disability and employability would be in order, especially as they apply to the veterans of World War I.

Most volunteers or citizen soldiers when the war was won grabbed the discharge, the \$60 clothing allowance, and proudly called it a deal. There were no VA hospitals, just informal medical inspection that would show a loss of arms or legs, and then they were civilians.

Little did they realize that they had been exposed to mustard gas which would years later cause lesions on the lungs, ending in tuberculosis. Little did they know that they would just be getting established in business or adapted to their jobs and the Great Depression would clean the slate and make it all begin all over again.

When social security became law, they were too near retirement age to earn an adequate retirement benefit and to compound that injustice, inflation reduced the value of their savings to a small part of what they had saved.

You have no doubt heard these facts recited before but I am restating them again in support of the contention that a small percentage of our service-connected cases be given a break. This can perhaps be done by giving a credit to various age groups, especially as it applies to those with a disability rating of less than 60 percent.

As this measure, H.R. 5709, introduced by Representative Montgomery, proposes an approximate 9.3-percent across-the-board increase in basic disability compensation and DIC benefit rates, we urge your immediate consideration of the same.

Addressing H.R. 6040, introduced by Representative Sam Hall to provide eligibility for VA burial benefits for certain veterans whose remains are unclaimed, is a subject that Commander Roché has been involved with firsthand in Los Angeles, in light of the recent controversy when Los Angeles Supervisor Hahn unearthed the unclaimed bodies of several veterans.

The Veterans of World War I only have two monetary benefits that all veterans have in common and now they have removed one by cutting the second benefit.

Powerful people believe it should be restored. At the present time across the country there are hundreds of veterans' bodies lying in city and county morgues with only a \$150 allowance pending toward the VA burial. The city and county administrators have reached an impasse and they are at the end of their wits as to how to provide a fitting and honorable burial for these worthy veterans.

Senator Alan Cranston from California has introduced legislation to guarantee that no veteran who served honorably in time of war will be buried in a pauper's grave. Cranston's bill, S. 2048, restores VA payment of \$300 for burial of a war veteran whose body goes unclaimed.

Congressman Augustus Hawkins has introduced a similar bill in the House of Representatives, H.R. 5369.

These bills will necessarily go through the normal congressional proceedings and will take some time to become law.

There is no future for us. The time is now.

For the Veterans of World War I, I wish to commend the chairman of this committee for reviewing the adequacy of compensation and DIC programs as well as our burial benefit and for the opportunity to express our frank opinion on the needs of the veterans.

We realize our presentation does not cover adequately the specific bills in question, due to our special needs in the aging sector. We again thank you for the opportunity to state our overall case before your honorable committee.

Thank you.

Mr. HALL. Thank you, Ms. Parkhurst, for making the presentation, in view of the absence of Commander Roché.

Any questions from the gentleman from Alabama? Any questions from the gentleman from Michigan?

Thank you very much for your testimony. It will, of course, be entered into the record.

[The prepared statement of the Veterans of World War I appears on page 111.]

Mr. HALL. Our next witness will be Commander John F. Wanamaker, deputy director of legislative affairs of the Retired Officers Association.

STATEMENT OF CMDR. JOHN F. WANAMAKER, DEPUTY DIRECTOR OF LEGISLATIVE AFFAIRS, THE RETIRED OFFICERS ASSOCIATION

Commander WANAMAKER. Good morning, Mr. Chairman. I would like to thank the committee for providing this opportunity to express our views on legislative proposals to make changes to the compensation programs administered by the Veterans' Administration.

This committee must decide the level of compensation which should be payable to veterans who have suffered impairment of earning power from service-connected disabilities.

Our association has on previous occasions pointed out that the current system does not properly compensate an individual for loss

of earning capacity for service-connected injury. For example, a nuclear engineer or a commanding officer compared to a high school dropout recruit may sustain identical injuries. Obviously, the amount of compensation based on average impairment of earning capacity does not properly compensate either of these two individuals.

We urge the Congress to review the complete disability program and require the Veterans' Administration to study methods to improve the compensation system.

Section 104 of H.R. 5709 would increase the benefits payable to survivors/dependents under the dependency and indemnity compensation program. I would like to point out that the proposed table of benefits for the surviving single spouse of an officer, a major (05) with 18 years of service, is \$731 per month or less than 20 percent of that officer's regular military compensation prior to his death.

Mr. Chairman, this is totally inadequate. The surviving spouse of this officer is in real economic trouble. In drawing a comparison, the widow of a Federal civilian employee whose death was job related, earning a comparable income, would receive \$1,929 per month.

I have chosen an extreme example but the disparity crosses the whole spectrum and almost all ranks and grades.

The title 2 compensation amendments of the bill, H.R. 5709, would limit service-connected disability compensation where a rating of total disability because of unemployability has been assigned for months after September 30, 1983, should the veteran be in receipt of benefits under social security or any other Federal program providing monetary benefits for disability or retirement.

Mr. Chairman, I envision extreme difficulty in administering this provision of the bill. Under current law military retired pay is already reduced by an amount an individual receives in VA disability compensation. If this were enacted and an individual were also in receipt of social security benefits, would the veteran have the offset against his retired pay restored by the amount attributed to social security? If this veteran were to experience a dollar-for-dollar offset, why then should he even apply for social security benefits early when the delay would only increase the spouse's social security benefit?

Which offset would take precedence, the military retired pay or VA compensation, since each would be offset against each other? Would withdrawals from an IRA account also be offset? How about the tax deferral on an IRS? This too is a Federal program providing monetary benefits for retirement.

If the veteran's wife worked in Federal employment and provided an annuity to a veteran through the civil service survivorship annuity program before she died, would these benefits also be used to offset against the VA compensation?

The same question would apply if the veteran's spouse was a military retiree. Would a social security benefit then offset both the VA compensation and the military survivor benefit plan? Would community property awarded by a State that divided the veteran's ex-spouse's civil service retirement in a divorce settlement be con-

sidered a Federal retirement program to offset the 100-percent disability unemployability compensation?

Public Law 95-479 guarantees DIC to widows of veterans who have held a totally disabling VA service connected rating for 10 or more continuous years before death.

A 100-percent unemployability rating has been determined to meet that totally disabling requirement of Public Law 95-479. If a veteran is also a Federal civil service retiree whose disability compensation would, for example, be kept at the amount of schedular rating, would he still continue to hold a totally disabling rating for DIC purposes under Public Law 95-479 even though the unemployability portion is reduced?

Although I do not agree with the requirement that a military retiree must have his retired pay which is based on years of service reduced if he is in receipt of VA disability compensation, the proposal to reduce the unemployable portion of the rating when in receipt of social security benefits is going too far.

Mr. Chairman, I will try to quickly summarize the rest of my statement and make a few comments.

In regard to the legislation on the amyotrophic lateral sclerosis, Mr. Chairman, I would suggest that instead of the presumption in this particular case, since medical science itself does not know the cause or cure for this disease, I would suggest that the medical facilities of the Veterans' Administration be made available to study the cause and cure of this disease and that an amount of \$10 million be authorized by this committee for that purpose.

As far as authorizing a flag to drape the coffin of those deceased who may be buried in Arlington National Cemetery—as a quick comment—we would support this proposal.

If you will allow me to continue for a few more minutes, I will try to summarize further.

In regard to the legislation that had been submitted, that unnumbered bill, I would suggest that the committee look into the section 2651 of title 42, United State Code, which is the Medical Cost Recovery Act and under the provisions of that law if care for injuries or diseases are furnished by the Government, the costs are already recoverable.

We would not want the Government under the provisions of this particular proposal to recover the costs twice. We don't think the Government should do that.

We also feel that there should be a little prudence allowed in those cases, that in the event that the recovery should cause undue hardship, the Administrator should be allowed to waiver payments or the paybacks.

In the event the beneficiary should have extended legal fees associated with this judgment and settlement, I feel that those costs should be deducted from any amount that would be deducted from the VA benefit.

That completes my statement.

Mr. HALL. Thank you very much, Commander.

[The prepared statement of Commander Wanamaker appears on page 115.]

Mr. HALL. Ms. Starbuck, on page 4 of your testimony some questions have been raised, well, actually it begins on the bottom of

page 3. I would like for you to look at those pages, 3 and 4. They have raised some questions I would like the Veterans' Administration to answer.

Ms. STARBUCK. We will be pleased to do that.¹

Mr. HALL. Next we have Mr. Richard W. Johnson, Jr., national legislative director of the Non-Commissioned Officers Association.

STATEMENT OF RICHARD W. JOHNSON, JR., NATIONAL LEGISLATIVE DIRECTOR, THE NON-COMMISSIONED OFFICERS ASSOCIATION

Mr. JOHNSON. Thank you, Mr. Chairman, for this opportunity to present the views of NCOA's more than 250,000 members on the bills under consideration today.

Before addressing any of the bills under consideration this morning, we would like to talk a little about the structure of the DIC program.

In previous testimony, NCOA has discussed the many inequities of a program in which benefits are based on the rank the deceased individual held at the time of death or discharge from the service.

Such a system does not recognize the nature or degree of the veterans' disability. It does not consider how the disability was incurred and under what circumstances it was incurred. It does not weigh the need of the survivors.

The last DIC study even showed that the highest DIC payments were going to the spouses with the greatest personal income, the highest level of education, and in fact the least need.

The study also concluded that the current system may not be the best but it was at least the least objectionable.

Mr. Chairman, we don't expect an immediate renovation of the program but we think we can do better than least objectionable. Frankly, we don't know how to provide an equitable realignment of DIC benefits. Instead, it is our hope that the committee will mandate a new look at the DIC program and hopefully such a study will provide the kinds of answers we seek.

Mr. Chairman, with regard to the bills under consideration, I will attempt to briefly outline the association's position. NCOA supports the proposed 8.1-percent increase contained in the Compensation and Survivors Amendments Act.

The association opposes the other provisions of the bill for a variety of reasons which we have outlined in our prepared statements and I will not elaborate on them here but our argument boils down to one primary objection and that is cutting of benefits to save money. We cannot and do not support the abrogation of commitment to veterans, particularly veterans with service-connected disabilities, simply to satisfy the transitory budget needs of any administration.

Finally, the association has no objection to any of the other proposals with one exception and that is H.R. 6041 which proposes to expand the Administrator's authority to provide burial flags to people who are not currently qualified.

¹ See p. 84.

Mr. Chairman, in view of the current budgetary restrictions under which the VA is operating and in view of the many programs that we are proposing to cut here this morning, we cannot support such a nonessential extension of veterans' benefits at this point in time.

Perhaps in the future when things are relaxed a little more and the budget of the Veterans' Administration suffers less scrutiny, we could support such a measure but not today.

That concludes my summary, Mr. Chairman. I will be happy to answer any questions the committee may have.

Mr. HALL. Thank you, Mr. Johnson. Thank you very much for your statement.

[The prepared statement of Mr. Johnson appears on page 123.]

Mr. HALL. Now we have Mrs. Madeline Van Wagenen, Survivors of Sacrifice who will present her testimony.

STATEMENT OF MADELINE VAN WAGENEN, SURVIVORS OF SACRIFICE

Mrs. VAN WAGENEN. Thank you, gentlemen, for allowing us to speak today.

On my right is Corrine Hayward who is the widow of a serviceman killed in Vietnam. My husband was killed on a rescue attempt.

Our husbands gave more for this country, we believe, than any men alive and yet in this past year we have heard ourselves referred to as "fat in the budget" and "a burden to the taxpayers."

The members of this committee are to be commended for their continued concern for the individuals affected by this committee's decision. I realize that over the years the work of this committee has benefited a great number of people.

I speak to you today on behalf of a nationwide network of military widows who are working together to fight an immediate crisis. This crisis is the elimination of the social security educational benefits for our children, which becomes effective in a matter of days, and the reduction of widows' benefits.

Social security benefits make up a significant part of the total package of benefits provided for the survivors of the military and their interests fall under the traditional purview of this committee.

The cuts in social security benefits that affect this group are the elimination of the widow's payment and the elimination of the social security payments to students enrolled in full-time secondary programs.

Although we are not here to discuss the wisdom of that cut, I would like to bring to the attention of the committee the impact that this cut has on the widows and orphans of the men killed in the armed services.

I would also urge you to consider the importance of maintaining commitment made to the men who served and died for this country.

Active duty military personnel are regularly instructed in their benefits. During this instruction they learn that in addition to the VA benefits provided, they have the protection of social security benefits.

Oftentimes widows and orphans receiving these benefits have as their largest source of income their social security checks. Now we are facing the immediate crisis that some of those checks and in one case an entire benefit program has been eliminated by an act of Congress. Orphans enrolling in college anytime after May 1, a mere 8 days from now, will not be eligible for their anticipated educational payments. Nonworking mothers whose youngest child reaches the 16th birthday will lose up to 2 years of her benefits.

In some families, both situations are occurring almost simultaneously.

There is in the House a bill which recognizes the special relationship between the military and the Government as its employer. H.R. 5600 attempts to remedy the situation by continuing the commitment made to the military by providing for the protection of children who qualified by September 1, 1981, for the now deleted benefit.

We strongly support this bill whose purpose is to maintain those commitments extended to this country's military by grandfathering these children through.

We recognize that due to this change in the law the committee may want to consider other benefits for current and future military members, however, the least the committee could do is to insure that the programs already promised are continued for those men who are no longer alive to accept or reject a major change in their benefit package.

We are able to support this bill because of our careful reexamination of the Department of Defense documents given to our husbands while on active duty. As you know, trained military advisers instruct active duty military members about their benefits and encourage them to so inform their wives. Careful estate planning can thus be accomplished and financial protection of survivors can then be insured.

I would like to present for the record an excerpt from one such example of a DOD document, delineating the benefits programs. On page 23, clear and unambiguous language details the social security benefits available and states that social security "will provide a monthly income to your unmarried children under age 18 or until 22 if they are full-time students and to your widow if she is caring for a child or children under 18 or disabled."

Additionally, it goes on to say "Any social security benefits paid your survivors are separate from, and in addition to, any form of compensation or other benefits paid by the Veterans' Administration * * *."

It appears that such emphasis was placed on the benefits provided for the purposes of recruitment and retention. Furthermore, we believe that such emphasis was placed on benefits because of the limitations military members face in obtaining private insurance; in negotiating a benefits package as a union might; and in the knowledge that unlike civilians, survivors cannot sue the Government for the death of their husbands or fathers, as civilians can in the case of a job related death or disability.

But why does H.R. 5600 place the responsibility of replacing these benefits on the Veterans' Administration? Clearly, the traditional mission of the Veterans' Administration has been to protect

the interests of the veteran and his survivors. As the VA motto states the Veterans' Administration's purpose is "To care for him who shall have borne the battle and his widow and his orphan."

Since the social security benefits are major part of the package of benefits provided to the military, the Veterans' Affairs Committee cannot afford to overlook the effect of the social security cut on the survivors of sacrifice.

It seems to us that if the VA committee is truly concerned with maintaining the commitments made to the men and with providing adequate compensation for their survivors, then they will be greatly concerned with this drastic loss.

Let me point to a precedent for such action. In 1957 when the Federal Government put the military under the social security system, it recognized a special obligation to the young servicemen. By law, the Veterans' Administration already makes a special payment in place of social security benefits.

Consider the case of the young man drafted to fight his country's wars who dies before he has worked the required one and a half year minimum under social security covered employment. He does not qualify for social security survivors' benefits.

The country recognizes a special obligation to that young serviceman and therefore to his family. As stated on page 23, VA will pay a special allowance to a widow with children whose husband was not fully and currently insured by social security. Payments vary and are paid according to certification by social security.

However, in every case now, when a military member dies in the defense of this country he has no vested rights in his benefits package. Unlike a civilian worker in a private pension plan protected by the Pension Reform Act of 1974 who can seek appropriate remedies and redress, the members of the military have no such protection for their benefits.

You would think that giving of one's life for his country would vest a serviceman's interest.

I thank you for this opportunity to speak on the issues of adequate compensation. I hope my remarks will lead you to believe, as I do, that the Federal commitment must be upheld to the military dead. The sacrifice they made is irreversible and so, therefore, must be the Federal commitment to them.

Mr. HALL. Thank you very much for your very fine statement. We appreciate what you have to say and hopefully we can work something out on this matter before 7 days is up. I hope so. Thank you, very much.

[The prepared statement of Ms. Van Wagenen appears on page 132.]

Mr. HALL. Our next witness is Mrs. Jean Arthurs, legislative director of the National Association of Military Widows.

STATEMENT OF JEAN ARTHURS, LEGISLATIVE DIRECTOR, NATIONAL ASSOCIATION OF MILITARY WIDOWS

Mrs. ARTHURS. Good morning. I am Jean Arthurs, president of the National Association of Military Widows. I am here today to present our views on dependency and indemnity compensation for the surviving spouses who will be affected by this legislation.

First, let me thank you for the opportunity to appear before this distinguished committee.

H.R. 5709 has been introduced to amend title 38 of the United States Code to increase the rates of dependency and indemnity compensation by 8.1 percent for surviving widows and children of a member who dies on active duty and for the survivors of a military retiree whose death and retirement is a result of disease or injury that has been established as being service connected.

It is our view that this increase is necessary to help ameliorate the drastic effects of rising inflation and housing displacement among military widows.

As a matter of priority, it is time for Congress to investigate and pass remedial legislation covering dependency and indemnity compensation. Although the Nation has acknowledged the debt to military widows through enactment of the DIC program, many of these fine people are being overlooked due to the unchallenged and longstanding inequity between the laws applicable to the Federal civil service employees and the Federal military service employee.

We ask that Congress enact DIC survivor entitlements on the same basis as applies to Federal civil service personnel. Military servicemen are paid and administered by the Department of Defense and they are Federal employees in every sense of the word, sharing the same paymaster with civil service employees.

For this reason we believe that the widows and dependent children of regular and reserve members of the Armed Forces should receive survivor compensation on the same basis provided survivors of civil service employees of the Government.

A substantial difference in death compensation exists at every pay level, between DIC and the FECA programs. This is due to the different compensation formula used to compute survivor benefits under each applicable law. The FECA compensation formula is computed at 55 percent of the civilian pay and escalates to 75 percent in some cases depending on the cause of death or where children are involved.

In comparison, the minimum amount of DIC for widows of privates, airmen, and seamen in pay grade E-1 equals 44.15 percent of the husband's pay. The maximum amount for DIC widows of pay grade O-10 personnel whose death was job-related after having served over 30 years, is 15.7 percent. I think that is something to stop and pause about.

DIC is the only compensation program that is predicated so that the longer one served and the higher rank and greater responsibilities one assumed, the less percentage of compensation the survivor receives.

To avoid these inconsistencies, we recommend that the long established FECA program apply to all Federal employees, whether they are military or civil service personnel.

Another issue of concern to military widows is that of benefit termination as a consequence of remarriage after age 62. Bills H.R. 548, introduced by Mr. Roe of New Jersey; H.R. 644, by Mr. Whitehurst of Virginia; and H.R. 1675, by Mr. Young of Florida, provide that the remarriage of the widow receiving DIC after the age of 62 shall not result in the termination of the DIC compensation.

The FECA, RSFPP, SBP, and the social security all allow remarriage as a means of permitting the older surviving spouses to live out their lives in comfort and dignity and legally married, which tends to be very important to their moral standards.

DIC is the only program that deprives Federal widows of benefits if they remarry after age 60. In the interest of equity among Federal employees—military and civil service—Congress should show compassion and act to correct this situation. The cost factor involved is actually almost negligible since so few widows could remarry after age 60.

You have just heard about the military widows and children whose educational benefits and certain widow benefits are going to be curtailed by social security. I did not speak to this issue today because I was advised it came under the Social Security Administration but after hearing Ms. Van Wagenen, you can see that this is just one further action which emphasizes the existing inequities in regard to programs relating to military widows.

Thank you very much.

Mr. HALL. Thank you very much, Mrs. Arthurs. Your testimony will, along with all the others, be given careful consideration.

[The prepared statement of Mrs. Arthurs appears on page 141.]

Mr. HALL. The next witness is Mr. Ellsworth Sharpe, national president of the Blinded Veterans Association.

STATEMENT OF ELLSWORTH L. SHARPE, NATIONAL PRESIDENT, THE BLINDED VETERANS ASSOCIATION

Mr. SHARPE. The first speaker here today was supposed to be Representative Christopher Smith; he was to have presented legislation which concerns inequalities that exist in the current bill.

Recent contact with his office, in fact, a few minutes ago, indicated that this legislation would still be introduced so I want to discuss this bill. It will be cosponsored by Representative Christopher Smith, Representative Albert Lee Smith and Representative Joseph Smith.

I was told that this bill is going to be sponsored by the three Representatives named Smith by our aide, Mr. Tom Smith.

Mr. HALL. Are there any other Smiths in the room that would like to get recognized?

Mr. SHARPE. I indicated it was nice of his uncle and cousins to help us out, but he said they were not related.

This bill, however, is very important and we have been testifying about these inequalities for several years now.

The first of the two bills relates to multiple disabilities. I have three examples that demonstrate the need for this legislation and the serious nature of blindness in combination with other disabilities. First, blinded veterans crossing the street and he hears a noise. As you all know your hearing direction is impaired when you only have hearing in one ear. If he could hear the noise of a car coming, he could look in both directions, and he could figure out what the problem was. But, the blinded veteran crossing the street hears the noise and has no idea. He could easily step in the wrong direction and be killed. Obviously, he would be in a much more serious situation.

The two would get paid the same amount of compensation for this loss of hearing. Yet, it is certainly a more serious condition for the veteran who is blind to contend also with this loss of hearing.

Loss of a foot, as a second example, in the case of someone with no other disability is very serious, it is an inconvenience to say the least. But a blinded veteran who loses a foot—when he walks to the curb—he kind of feels the curb with his foot or on level ground his feet tell him that something unusual is happening.

If you have a prosthesis and you are doing this, feedback is much less precise, so it is much more of a disability for the blinded veteran.

The third example is loss of both hands. In such a case braille is just about out of the question. Imagine someone who has to use braille with the loss of both hands and also being blind. But, say you are going to turn on your tape recorder to record or you are going to turn on a radio. A blinded veteran with both hands can feel where the knobs are but when you add the fact that there is a prosthesis or whatever on the end of the hand of this veteran who has lost his hands and is also blinded, it is a multiplying disability rather than an additive one.

Hopefully, this bill will be supported and I encourage the entire subcommittee and committee to cosponsor this bill.

Another provision of the legislation has to do with people who are rated M and N. A veteran rated M has lost vision in both eyes but the eyes are still intact; whereas, a veteran rated N has lost vision or is at least legally blind in both eyes but they are scarred or perhaps one or both are removed and have some scarring or disfigurement.

In the existing law, a veteran whose eyes are scarred and who has a little bit of vision or light perception could make more money in compensation than a totally blind veteran with both eyes intact.

A precedent has been set for loss of limbs. Loss of use of limbs results in the payment of the same amount. We believe this is an inconsistency and perhaps it slipped by unnoticed; but, the loss of use of both eyes is rated differently from the loss of eyes.

We notice in the administration's cost-of-living adjustment, 8.1 percent is the amount recommended. This, of course, is computed in the first quarter of the year and the veteran doesn't see this increase until the last quarter of the year.

The veteran is at least a half or three-quarters of a year behind and this has happened ever since this system has been going. We, therefore, feel that an 8.1-percent adjustment should be a minimum amount to be considered, not a maximum amount.

We would also like to comment on the redefinition of a dependent, that when a child gets to be 18 and is out of high school, that he should no longer be considered as a dependent for pension purposes.

We believe that this is wrong. With the Federal Government getting out of the grants and aid to higher education and the price going up rapidly, we believe this would be very bad for people who are sending their dependents to college.

In conclusion, I would like to recommend, very hopefully, that our latest testimony and our testimony on March 2, where we recommend the changes in title 38 having to do with blindness and

DIC—that DIC would be recomputed based on disability rather than based on rank. It would be more appropriate and we hope you will give more of these items consideration.

Thank you, very much.

Mr. HALL. Thank you, Mr. Sharpe.

I would like to indicate that we just had a telephone call that Mr. Chris Smith is on his way here so we will recognize him when he arrives.

I recognize the gentleman, Mr. Smith, from the State of Alabama.

Mr. SMITH of Alabama. Mr. Sharpe, brothers Chris and Joe and myself have scheduled a briefing at 1 p.m. this afternoon in room 340, on the two bills that you have referred to. That is room 340 here in the Cannon Building. I am sure that Congressman Chris Smith will pass that information on to you when he arrives.

I did want to make you aware of that and I appreciate your testimony here this morning.

Mr. HALL. Thank you for your testimony, Mr. Sharpe, and we appreciate what you have had to say to us today.

[The prepared statement of Mr. Sharpe appears on page 144.]

Mr. HALL. The next witness is Mr. Gordon Mansfield, associate legislative director of the Paralyzed Veterans of America.

STATEMENT OF GORDON H. MANSFIELD, ASSOCIATE LEGISLATIVE DIRECTOR, THE PARALYZED VETERANS OF AMERICA

Mr. HALL. I again apologize to all the witnesses for the absence of questions, but we have about 15 or 16 witnesses who are set to go today, and with additional hearings that everyone here has, it is not that we are not interested—and I don't want you to think for a moment that we are not being very receptive to everything that each witness has to say—but this just happens to be one of those days when time is of the essence to a lot of the people. You can see that by the number of people who are not here today.

Mr. Mansfield, you may proceed.

Mr. MANSFIELD. Thank you, Mr. Chairman, for this opportunity to present the views and concerns of the Paralyzed Veterans of America on the legislation being considered today.

I believe that the Paralyzed Veterans of America's concerns are fully outlined in the submitted testimony which I understand is being submitted for the record. I would, however, like to comment on a few of the provisions.

First of all, with reference to the proposed 8.1-percent increase in the compensation and the DIC rates, Paralyzed Veterans of America feels that this is a reasonable rate of increase in these benefits because it seems to accurately reflect the anticipated rate of inflation.

We fully support this provision of H.R. 5709 and are very grateful to the members of this subcommittee and of the full committee for working with the administration to insure that the fiscal year 1983 budget request for the Veterans' Administration contains funding to provide for this increase.

I would like to address myself to two specific proposals that the Paralyzed Veterans of America has testified about previously, con-

cerning the DIC benefits program. The Paralyzed Veterans of America continues to find it bothersome that there remains the inequity that the survivor receives DIC benefits based on the veteran's military pay grade and not on his degree of disability.

We understand that the rationale for awarding benefits based on pay grade when a serviceman dies while on active military service, however, surviving spouses of veterans who are severely disabled for many years deserve a greater benefit.

In these cases, DIC should be awarded on the basis of the veteran's degree of disability, not on his military pay grade. We ask that the DIC be at least 75 percent of the disabled veteran's monthly compensation rate at the time of his death.

We also request an amendment to section 410(b)1 of title 38, so that in the case of any veteran who has been rated as service connected disabled because of spinal cord injury or dysfunction resulting in paraplegia or quadraplegia for a period of less than 10 years, and such a veteran dies as a result of any disease, DIC benefits would be paid to the surviving spouse and/or children in the same manner as if the disease were service connected.

Mr. Chairman, at this time I would like to address myself to certain specific proposals contained in the bills being considered today.

With regard to section 201 of H.R. 5709—

Mr. HALL. What page are you on now in your testimony?

Mr. MANSFIELD. Page 8.

Mr. HALL. Thank you.

Mr. MANSFIELD. The Paralyzed Veterans of America completely opposes enactment of section 201 of the bill because it would require unemployable service-connected disabled veterans to elect between compensation benefits and other retirement or disability benefits in that their combined benefits could not exceed the compensation to which they are entitled.

Compensation benefits are awarded to those who have been disabled in service to the Nation. These benefits exist to offset the individual's diminished earning capability.

Veterans have often paid into social security or other contributory programs before entering the active military service and they continue to pay into the social security trust fund while in receipt of military pay.

Paralyzed Veterans of America believes that benefits available under social security are the property rights of the payor and not a free gift as H.R. 5709 assumes them to be.

The veteran has paid dearly for compensation benefits, frequently without a choice, and has also paid into the social security program—again without a choice.

Section 201 would mix unrelated items, the veteran's compensation benefits and his contributory program benefits. Paralyzed Veterans of America sees section 201 as merely an effort to deny service-connected disabled veterans that to which they are entitled, both as paying citizens and as citizens who have been disabled in service to their country.

This section would accomplish this merely because both the programs are centered in the Federal Government. Should the individual veteran be allowed to apply his amount of payments into social

security to some other private retirement or disability program, there would be no question but that he could draw from this program and remain entitled to compensation benefits.

With regard to section 301 of H.R. 5709, which would add a new section to delay payment of compensation DIC pension benefits until the first month after eligibility, the Paralyzed Veterans of America—in the interest of time, sir, we will skip that one.

I specifically would like to address myself to proposals which would deny pension benefits to dependents of non-service-connected disabled veterans as they—that is the dependents—pursue programs of advanced education.

Pension recipients are some of the Nation's less prosperous citizens and by the very definition pension benefits are means tested and consequently those in receipt of pensions cannot afford to help their children pursue educational goals. Paralyzed Veterans of America opposes this program, because of that.

With regard to the proposed legislation which would require offsetting from Veterans' Administration benefits the amount received from another financial settlement for the same injury or death, Paralyzed Veterans of America would like to offer its opposition.

We have already seen this provision apply to a small number of DIC recipients in section 4102 of title 38. Now we see an attempt to expand that offset of payment to veterans entitled to compensation and pension.

Paralyzed Veterans of America believes that this proposal is unjust and inequitable. Compare the effect of a corporate executive when death occurs while traveling on company business. Would an award in a wrongful death action stop payment of other benefits to the widow or family?

Would company retirement benefits be returned to the corporate treasury because an airline insurer was forced to recompense the the family or would company insurance policies be offset by that amount?

The intent of this legislation seems to presume that compensation payments are made in full payment of the loss incurred. The question really becomes: How do we set a value on the loss of life or limb? The Government in its determination of compensation payments uses an average value basis for determining this payment.

A general and a private when incurring the same injury are entitled to the same monthly payment of compensation. DIC payments are based solely upon the pay grade of the serviceman.

None of the criteria such as age, education, health condition, employment record, or anticipated earnings used by civil courts in determining personal injury awards are even considered.

Paralyzed Veterans of America does not believe that those veterans and their families who might be able to recoup some of the loss through receipt of a money or property damage award deserve what this legislation proposes.

Paralyzed Veterans of America would like to give special emphasis to H.R. 4308 and thank Representative Hammerschmidt for submitting this legislation.

Specifically, H.R. 4308 would provide a presumptive period of 7 years for amyotrophic lateral sclerosis and progressive muscular atrophy. ALS is one of the most formidable illnesses known to mankind, commonly leaving its victims after onset with a short life expectancy. Fortunately, it affects a very limited number of persons but its origins remain largely a mystery.

Representative Hammerschmidt introduced a similar legislative proposal in the last Congress and the Paralyzed Veterans of America gave it its complete support. We appreciate his continuing concern for victims of ALS and beseech this subcommittee to give favorable consideration to H.R. 4308, which would give ALS victims the same consideration for service connection as it does to those who experience multiple sclerosis, another awesome neurological disease.

That concludes my testimony, Mr. Chairman. Thank you.

Mr. HALL. Thank you very much for your testimony and the manner in which you abbreviated some of it. We thank you.

[The prepared statement of Mr. Mansfield appears on p. 152.]

Mr. HALL. At this time a colleague and a member of the Veterans' Affairs Committee, Mr. Chris Smith of the State of New Jersey is present.

Mr. Smith, you may proceed in any manner you wish. If you wish to summarize, your entire statement will be made a part of this record. You may proceed.

STATEMENT OF HON. CHRISTOPHER H. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. SMITH of New Jersey. Thank you, Mr. Chairman and good morning. I want to begin first by thanking you for giving me the opportunity to appear before the committee to discuss what I consider to be some major inequities in title 38, section 314, that treats blinded veterans unfairly, in my opinion.

I plan to introduce legislation today that would correct two of these inequities. First, I will introduce legislation that would classify totally blinded veterans without light perception under subsection "n" of the current schedule instead of subsection "m" where they are now rated.

This would equalize benefits for totally blinded veterans without light perception with those who have suffered the enucleation of the eyes or deformity or scarring.

In the case of the loss of extremities, the code already provides for not only the loss of the extremities but also for the loss of the use of the extremities. I believe that the same standard should apply to those veterans who have lost their vision.

A totally blinded veteran without light perception has suffered the total loss of the use of his eyes, and therefore, he should be rated the same as someone who has suffered the anatomical loss of his eyes. Medical experts can also attest to the more severe nature of blindness without light perception. Light perception is an important aspect of balance, for example, and the loss of light perception can make blindness a more debilitating condition.

Additionally, I plan to introduce legislation that would amend the schedule to provide additional compensation for blinded veter-

ans who have incurred losses in hearing and/or suffered loss of their extremities.

Even a minor hearing loss in a blinded veteran is a greater hardship than if that hearing loss affected someone who is not blinded. Currently, hearing losses are evaluated by the Veterans' Administration as if they occurred in someone who is not blind.

In the case of a blinded veteran who has lost an extremity, he has essentially lost contact with the world around him. The loss of a tactile sense in someone who is blind is a serious situation and should be so judged by the VA.

Both of these bills which I will introduce today are cost effective measures, Mr. Chairman. Neither would exceed \$1 million, a small amount considering the group that would be helped.

Both bills would make minor changes to the schedule and impact on a small minority of veterans, service connected veterans who incurred their disabilities in the defense of this Nation.

Mr. Chairman, I do not need to stress before this committee the great sense of commitment this Nation has to its service-connected veterans. Our veterans served their country when they were most needed and we should never forget the great sacrifices we have made.

I believe that the two provisions that I have cited today, that impact harshly on blinded veterans, are simply oversights in the current schedule. They were not instituted to treat blinded veterans unfairly but their effect is the same.

I would also like to take this opportunity to invite you to a briefing this afternoon at 1 p.m. on the two bills that I will be introducing later on this afternoon.

Mr. Skip Sharpe, president and chairman of the board of the directors of Blinded Veterans Association and Mr. S. A. Vale, acting executive director, will be present along with the cosponsors, Mr. Albert Lee Smith and Mr. Joseph Smith, to answer any questions that you or any other member may have.

Again, I want to thank you for permitting me to appear before the committee this morning.

Mr. HALL. Thank you, Mr. Smith, for your dedication to this measure and I know that you have put in a great amount of work on it and are interested in it. The bill will, I am sure, receive close scrutiny by this committee and also by the Congress as a whole.

[The prepared statement of Mr. Smith of New Jersey appears on p. 193.]

Mr. HALL. The next witness is Mr. Paul Eagan, deputy director for the national legislative commission, representing The American Legion.

STATEMENT OF PAUL S. EAGAN; AND JOHN F. SOMMER, DEPUTY DIRECTORS, NATIONAL LEGISLATIVE COMMISSION, THE AMERICAN LEGION

Mr. EAGAN. Mr. Chairman, echoing your earlier remarks, a nerve has indeed been struck with The American Legion. I refer to the proposal that would affectively eliminate the 100-percent compensation for unemployment.

Having said that, let me introduce our witness this morning, John Sommer, deputy director of our veterans affairs and rehabilitation commission.

Mr. HALL. Please proceed, Mr. Sommer.

Mr. SOMMER. Thank you, Mr. Chairman.

The American Legion is supportive of the 8.1-percent increase in compensation, DIC, and related benefits proposed in title 1 of H.R. 5709.

We also support H.R. 5144 which would provide eligibility for compensation benefits for those members of the senior Reserve Officers Training Corps injured during summer military training camp and H.R. 4308 to provide a presumptive period of 7 years for amyotrophic lateral sclerosis.

The Legion would certainly not oppose the provision of eligibility for burial benefits from the Veterans' Administration for certain veterans whose remains are unclaimed although we are mandated to strive for the restoration of the burial allowance for all those veterans who were eligible prior to the enactment of the Budget and Reconciliation Act of 1981.

Section 201 of H.R. 5709 causes a great deal of concern because it would, if enacted, basically eliminate 100-percent ratings for service-connected disabilities based upon individual unemployability which to The American Legion is untenable and contemptable.

We have illustrated in our prepared statement the history of this benefit from its inception and the promulgation subsequent to the enactment of the World War I Veterans' Act through the 1930's and the 1940's when a large amount of interest was associated with this benefit and a substantial amount of emphasis was placed on the interpretation and application of this extra schedular rating by the service organizations and the Veterans' Administration, including the then administrator, General Frank T. Hines.

The purpose of our providing this history and chronology of events relating to individual unemployability was to demonstrate the importance that has been placed on it, the deliberations it has undergone, and the substantial amount of reasonable thinking that has gone into the development thereof.

The disability compensation program for veterans has been scrutinized by Presidentially appointed commissions, congressional committees, and reviewed by the Veterans' Administration, itself.

The basic purpose of compensation has always been economic maintenance and the loss of earning capacity as the result of disability has continued to be the primary rating criteria.

It has also always been recognized that human life has values beyond the economic sphere and other factors such as loss of physical vitality and shortened longevity have been and must be taken into consideration.

The Veterans' Administration at the request of this committee last year reviewed 68,086 cases of severely disabled veterans with total ratings based upon individual unemployability.

Of those reviewed, approximately 5 percent were reduced, however, over three times that number were elevated to schedular 100-percent ratings.

Individual unemployability has survived all of the scrutinization, the studies, and the reviews of the compensation program virtually unscathed. It has stood the test of time, one might say.

Is it now fair to assume that in an effort to produce cost savings, this benefit should be placed in the same category as the non-service-connected pension program? Should the payment of this entitlement to veterans severely disabled as a result of service to their country be limited by the amount they receive from Federal programs to which they contributed when able to work? The American Legion thinks not.

Mr. Chairman, we urge that sections 201 and also 202 which would eliminate dependency allowance for veterans with service-connected disabilities rated 30 and 40 percent not be enacted.

Mr. Chairman, that concludes our statement, and we certainly thank you for the opportunity to present our views today.

Mr. HALL. We appreciate the testimony and also the fact that you have gone back to February 5, 1940 when following the rehab conference here an official with the Legion and with the administrator of veterans affairs, General Hines, came up with some recommendations that have pretty much been on the books since that time.

We appreciate your giving us the benefit of that 42 years of experience, based upon that meeting that was held at that time.

Mr. SOMMER. Thank you, Mr. Chairman. We appreciate having been able to provide it to you.

[The prepared statement of Mr. Sommer appears on page 169.]

Mr. HALL. Our next and last witness will be Mr. Philip Mayo, special assistant with the national legislative service of the Veterans of Foreign Wars.

STATEMENT OF PHILIP R. MAYO, SPECIAL ASSISTANT, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS

Mr. MAYO. Thank you, Mr. Chairman, for the opportunity to present our views this morning.

My prepared statement reflects our views on the measures that are before the committee today and with that in mind I would like to proceed on to my summary statement.

We recognize that we are going through times of fiscal constraint and that economies in Government spending are being sought for obvious reasons.

Keeping those facts in mind, Mr. Chairman, we support the current cost-of-living increase for those in receipt of compensation and DIC payments, however, we cannot subscribe to the tremendous cuts in programs benefiting those individuals.

We support, instead, the committee's action in its report to the Budget Committee recently. We view this as a reasonable and viable means to meet the fiscal demands of the times while protecting the integrity of our veterans' programs.

This concludes my summary.

Mr. HALL. Thank you, Mr. Mayo. I appreciate your testimony.

[The prepared statement of Mr. Mayo appears on page 187.]

Mr. HALL. I want to thank all of you for being most helpful and considerate today. We just heard the bells, preparatory to going into session.

I would like to state that Mr. Wylie would like to present some questions to the Veterans' Administration for answering and returning back to us and to him. At this time the gentleman, Mr. Wylie, would like to place in the record a statement which will be admitted and made a part of this record.

[The material appears on page 194.]

Mr. HALL. The subcommittee stands adjourned.

[Whereupon, at 10:45 a.m., the subcommittee was adjourned.]

[The following material was submitted for the record:]

APPENDIX

I

97TH CONGRESS
1ST SESSION

H. R. 4308

To amend title 38 of the United States Code to provide that progressive muscular atrophy or amyotrophic lateral sclerosis developing a 10 per centum or more degree of disability within seven years after separation from active service during a period of war shall be presumed to be service connected.

IN THE HOUSE OF REPRESENTATIVES

JULY 28, 1981

Mr. HAMMERSCHMIDT introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38 of the United States Code to provide that progressive muscular atrophy or amyotrophic lateral sclerosis developing a 10 per centum or more degree of disability within seven years after separation from active service during a period of war shall be presumed to be service connected.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
That paragraph (4) of section 312 of title 38, United States Code, is amended to read as follows:

“(4) multiple sclerosis; or progressive muscular atrophy or amyotrophic lateral sclerosis developing a 10 per centum degree of disability or more within seven years from the date of separation from such service;”.

97TH CONGRESS
1ST SESSION

H. R. 5144

To amend title 38, United States Code, to make members of Senior Reserve Officers' Training Corps programs who are injured during summer military camp eligible for compensation benefits administered by the Veterans' Administration.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 9, 1981

Mr. DASCHLE introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to make members of Senior Reserve Officers' Training Corps programs who are injured during summer military camp eligible for compensation benefits administered by the Veterans' Administration.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
That section 101(22) of title 38, United States Code, is amended—

- (1) by striking out "and" at the end of clause (C);
- (2) by redesignating clause (D) as clause (E); and

(3) by inserting after clause (C) the following new clause (D):

"(D) annual training duty performed by a member of a Senior Reserve Officers' Training Corps program when ordered to such duty for a period of fourteen days or more; and".

SEC. 2. The amendments made by the first section of this Act shall apply with respect to diseases and disabilities incurred or aggravated after September 30, 1982.

97TH CONGRESS
2D SESSION

H. R. 5709

To amend title 38, United States Code, to increase the rates of disability compensation for disabled veterans; to increase the rates of dependency and indemnity compensation for surviving spouses and children of veterans; to discontinue duplicative payments to certain veterans; to increase the level of disability required for the payment of dependents' allowances; to provide for cost-saving improvements in veterans' programs; and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 1982

Mr. MONTGOMERY (by request) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to increase the rates of disability compensation for disabled veterans; to increase the rates of dependency and indemnity compensation for surviving spouses and children of veterans; to discontinue duplicative payments to certain veterans; to increase the level of disability required for the payment of dependents' allowances; to provide for cost-saving improvements in veterans' programs; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
That this Act may be cited as the "Veterans' Disability

Compensation and Survivors' Benefits Amendments of 1982".

(a) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—COMPENSATION AND DEPENDENCY
AND INDEMNITY COMPENSATION RATE IN-
CREASES

RATES OF DISABILITY COMPENSATION

SEC. 101. (a) Section 314 is amended—

(1) by striking out "\$58" in subsection (a) and inserting in lieu thereof "\$63";

(2) by striking out "\$107" in subsection (b) and inserting in lieu thereof "\$116";

(3) by striking out "\$162" in subsection (c) and inserting in lieu thereof "\$175";

(4) by striking out "\$232" in subsection (d) and inserting in lieu thereof "\$251";

(5) by striking out "\$328" in subsection (e) and inserting in lieu thereof "\$355";

(6) by striking out "\$413" in subsection (f) and inserting in lieu thereof "\$446";

(7) by striking out "\$521" in subsection (g) and inserting in lieu thereof "\$563";

(8) by striking out "\$604" in subsection (h) and inserting in lieu thereof "\$653";

(9) by striking out "\$679" in subsection (i) and inserting in lieu thereof "\$734";

(10) by striking out "\$1,130" in subsection (j) and inserting in lieu thereof "\$1,222";

(11) by striking out "\$1,403" and "\$1,966" in subsection (k) and inserting in lieu thereof "\$1,517" and "\$2,125", respectively;

(12) by striking out "\$1,403" in subsection (l) and inserting in lieu thereof "\$1,517";

(13) by striking out "\$1,547" in subsection (m) and inserting in lieu thereof "\$1,672";

(14) by striking out "\$1,758" in subsection (n) and inserting in lieu thereof "\$1,900";

(15) by striking out "\$1,966" each place it appears in subsections (o) and (p) and inserting in lieu thereof "\$2,125";

(16) by striking out "\$844" and "\$1,257" in subsection (r) and inserting in lieu thereof "\$912" and "\$1,359, respectively;

(17) by striking out "\$1,264" in subsection (s) and inserting in lieu thereof "\$1,366"; and

(18) by striking out "\$244" in subsection (t) and inserting in lieu thereof "\$264".

(b) The Administrator of Veterans Affairs may adjust administratively, consistent with the increases authorized by this section, the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

RATES OF ADDITIONAL COMPENSATION FOR DEPENDENTS

SEC. 102. Section 315(1) is amended—

(1) by striking out "\$69" in clause (A) and inserting in lieu thereof "\$75";

(2) by striking out "\$116" in clause (B) and inserting in lieu thereof "\$125";

(3) by striking out "\$153" in clause (C) and inserting in lieu thereof "\$165";

(4) by striking out "\$192" and "\$38" in clause (D) and inserting in lieu thereof "\$208" and "\$41", respectively;

(5) by striking out "\$47" in clause (E) and inserting in lieu thereof "\$51";

(6) by striking out "\$86" in clause (F) and inserting in lieu thereof "\$93";

(7) by striking out "\$123" and "\$38" in clause (G) and inserting in lieu thereof "\$133" and "\$41", respectively;

(8) by striking out "\$56" in clause (H) and inserting in lieu thereof "\$61";

(9) by striking out "\$125" in clause (I) and inserting in lieu thereof "\$135"; and

(10) by striking out "\$105" in clause (J) and inserting in lieu thereof "\$114".

CLOTHING ALLOWANCE FOR CERTAIN DISABLED

VETERANS

SEC. 103. Section 362 is amended by striking out "\$305" and inserting in lieu thereof "\$330".

RATES OF DEPENDENCY AND INDEMNITY COMPENSATION

FOR SURVIVING SPOUSES

SEC. 104. (a) Subsection (a) of section 411 is amended to read as follows:

"(a) Dependency and indemnity compensation shall be paid to a surviving spouse, based on the pay grade of the person upon whose death entitlement is predicated, at monthly rates set forth in the following table:

"Pay grade	Monthly rate	"Pay grade	Monthly rate
E-1.....	\$449	W-4.....	\$643
E-2.....	\$463	O-1.....	\$568
E-3.....	\$473	O-2.....	\$586
E-4.....	\$504	O-3.....	\$627
E-5.....	\$518	O-4.....	\$663
E-6.....	\$530	O-5.....	\$731
E-7.....	\$556	O-6.....	\$823

E-8.....	\$586	O-7.....	\$891
E-9.....	¹ \$619	O-8.....	\$976
W-1.....	\$568	O-9.....	\$1,049
W-2.....	\$590	O-10.....	² \$1,147
W-3.....	\$608		

¹ If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 402 of this title, the surviving spouse's rate shall be \$658.

² If the veteran served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, at the applicable time designated by section 402 of this title, the surviving spouse's rate shall be \$1,230."

(b) Subsection (b) of such section is amended by striking out "\$48" and inserting in lieu thereof "\$52".

(c) Subsection (c) of such section is amended by striking out "\$125" and inserting in lieu thereof "\$135".

(d) Subsection (d) of such section is amended by striking out "\$62" and inserting in lieu thereof "\$67".

RATES OF DEPENDENCY AND INDEMNITY COMPENSATION

FOR CHILDREN

SEC. 105. Section 413 is amended—

(1) by striking out "\$210" in clause (1) and inserting in lieu thereof "\$227";

(2) by striking out "\$301" in clause (2) and inserting in lieu thereof "\$325";

(3) by striking out "\$389" in clause (3) and inserting in lieu thereof "\$421"; and

(4) by striking out "\$389" and "\$79" in clause (4) and inserting in lieu thereof "\$421" and "\$85", respectively.

RATES OF SUPPLEMENTAL DEPENDENCY AND INDEMNITY
COMPENSATION FOR CHILDREN

SEC. 106. Section 414 is amended—

(1) by striking out "\$125" in subsection (a) and inserting in lieu thereof "\$135";

(2) by striking out "\$210" in subsection (b) and inserting in lieu thereof "\$227"; and

(3) by striking out "\$107" in subsection (c) and inserting in lieu thereof "\$116".

TITLE II—COMPENSATION AMENDMENTS

SEC. 201. Section 3104 is amended by adding at the end thereof the following new subsection:

"(d) Where a rating of total disability based on individual unemployability resulting from service-connected disability has been assigned to any veteran in receipt of benefits under title II of the Social Security Act or any other Federal program providing monetary benefits for disability or retirement, compensation under section 314 or 315 of this title for any month beginning after September 30, 1983, shall not exceed the greater of—

"(1) the amount payable to the veteran on the basis of the veteran's rating under subpart B of part 4 of title 38, Code of Federal Regulations, or

"(2) the amount payable to the veteran on the basis of the veteran's rating of total disability by

reason of individual unemployability, reduced by the amount of benefits payable for that month under title II of the Social Security Act or such other Federal program.”.

SEC. 202. Section 315, as amended by section 102 of this Act, is further amended by striking out “30 per centum,” both places it appears and inserting in lieu thereof “50 per centum,”.

TITLE III—MISCELLANEOUS AMENDMENTS

SEC. 301. Chapter 51 of title 38, United States Code, is amended—

(a) by inserting after section 3010 the following new section:

**“§ 3011. Commencement of the period of payment based
on an award**

“(a) Notwithstanding section 3010 of this title or any other provision of law and except as provided in subsection (c) of this section, payment of monetary benefits based on an award or an increased award of compensation, dependency and indemnity compensation, or pension shall not be made for any period prior to the first day of the calendar month following the month in which the award became effective as provided under such section 3010 or other provision of law.

“(b)(1) During the period between the effective date of an award as provided under section 3010 of this title or other

provision of law and the commencement of the period of payment based on such award as provided under subsection (a) of this section, an individual entitled to receive monetary benefits shall be deemed to be in receipt of such benefits for the purpose of all laws administered by the Veterans' Administration, except as provided in paragraph (2) of this subsection.

"(2) If any person who is in receipt of retired or retirement pay would also be eligible to receive compensation or pension upon the filing of a waiver of such pay in accordance with section 3105 of this title, such waiver shall not become effective until the first day of the month following the month in which such waiver is filed, and nothing in this section shall prohibit the receipt of retired or retirement pay for any period prior to such effective date.

"(c) This section shall apply to payments made pursuant to section 3110 of this title only if the monthly amount of dependency and indemnity compensation or pension payable to the surviving spouse is greater than the amount of compensation or pension the veteran would have received for the month in which such veteran's death occurred.", and

(b) by inserting in the table of sections at the beginning of such chapter, after the item relating to section 3010, the following new item:

"3011. Commencement of the period of payment based on an award."

SEC. 302. Clause (2) of subsection (b) of section 3012 is amended by striking out "of the calendar year" and inserting in lieu thereof "of the month".

SEC. 303. Section 3020 is amended by adding at the end thereof the following new subsection:

"(f)(1) Notwithstanding any other provision of this title, any payment of monetary benefits under section 306(a) of the Veterans' and Survivors' Pension Improvement Act of 1978 (Public Law 95-588) or section 521, 541, or 542 of this title shall be made only in an amount that is a multiple of \$1.

"(2) In determining the amount of any such payment, the Administrator shall—

"(A) first determine the amount payable without regard to paragraph (1) of this subsection and

"(B) if such amount is not a multiple of \$1, then round such amount to the next lower multiple of \$1.

"(3) The amount payable to a person under paragraph (1) of this subsection shall be considered as the amount of that person's monetary benefits for the purpose of all laws administered by the Veterans' Administration, and no person shall have any claim to the difference between the amount determined under clause (A) of paragraph (2) of this subsection and the amount payable under paragraph (1)."

SEC. 304. (a) Section 501 is amended by adding at the end thereof the following new paragraph:

“(5)(A) For the purposes of sections 521, 522, 541, 542, and 543 of this title, the term ‘child’ shall be as defined in section 101(4) of this title except as provided in subparagraph (B) of this paragraph.

“(B) The term ‘child’ includes a child who is over the age of eighteen if such child is pursuing a program of education for the purpose of receiving a secondary school diploma and is under the age of nineteen but does not include a child over the age of eighteen who is not pursuing such a program unless such child before attaining the age of eighteen became permanently incapable of self-support.”.

(b) The amendment made by subsection (a) of this section shall not apply to any child to or on behalf of whom pension or additional pension for the month of September 1982 is payable under section 521, 541, or 542 if such child has attained the age of eighteen years prior to October 1, 1982.

(c)(1) Notwithstanding any provision of section 521, 541, 542, or 3112, or section 306(a) of Public Law 95-588, and except as provided in paragraph (2) of this subsection, pension or additional pension payable to or on behalf of any child, including a child described by subsection (b) of this section, under section 521, 541, or 542 or section 306(a) of Public Law 95-588, on the basis of the child's pursuit of a

course of instruction at an approved educational institution, shall—

(A) not be paid for the months of May, June, July, and August, beginning with the months of May 1982;

(B) not be paid for any month after July 1985;

(C) not exceed for any month the amount of the pension or additional pension (attributable to such child) for the month of August 1981 (or a later month if the Administrator deems a later month appropriate under the circumstances), reduced by an amount—

(i) during the months after July 1982 and before August 1983, equal to 25 per centum of the benefit payable for August 1981 (or such later month);

(ii) during the months after July 1983 and before August 1984, equal to 50 per centum of the benefit payable for August 1981 (or such later month); and

(iii) during the months after July 1984 and before August 1985, equal to 75 per centum of the benefit payable for August 1981 (or such later month); and

(D) not be paid for any month after July 1982 if such pension or additional pension is discontinued at

any time after July 31, 1982, by reason of such child's discontinuance of pursuit of a course of instruction at an approved educational institution.

(2) The limitations and reductions provided for under paragraph (1) of this subsection shall not apply to pension or additional pension payable to or on behalf of a child who—

(A) before attaining the age of eighteen became permanently incapable of self-support, or

(B) who, after attaining the age of eighteen and before attaining the age of nineteen, is pursuing a program of education for the purpose of receiving a secondary school diploma.

TITLE IV—EFFECTIVE DATES

SEC. 401. (a) The amendments made by sections 301 and 303 of this Act shall take effect on July 1, 1982.

(b) The amendments made by title I and sections 202, 302, and 304(a) of this Act shall take effect on October 1, 1982.

(c) The amendment made by section 201 of this Act shall take effect on October 1, 1983.

(d) The provisions of subsections (b) and (c) of section 304 of this Act shall take effect upon the date of the enactment of this Act.

97TH CONGRESS
2D SESSION

H. R. 6039

To amend title 38, United States Code, to correct a technical error with respect to entitlement to dependency and indemnity compensation.

IN THE HOUSE OF REPRESENTATIVES

APRIL 1, 1982

Mr. SAM B. HALL, Jr., introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to correct a technical error with respect to entitlement to dependency and indemnity compensation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
That section 410(b)(1) of title 38, United States Code, is amended—

(1) by inserting "or entitled to receive" after "was in receipt of"; and

(2) by inserting "(or but for a clear and unmistakable error would have been)" after "(A) was".

SEC. 2. The amendments made by the first section of this Act shall apply with respect to dependency and indemnity compensation payable for months after September 1982.

97TH CONGRESS
2D SESSION

H. R. 6040

To amend title 38, United States Code, to provide eligibility for burial benefits from the Veterans' Administration for certain veterans whose remains are unclaimed.

IN THE HOUSE OF REPRESENTATIVES

APRIL 1, 1982

Mr. SAM B. HALL, Jr. introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to provide eligibility for burial benefits from the Veterans' Administration for certain veterans whose remains are unclaimed.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That section 902(a) of title 38, United States Code, is amended by striking out "When a veteran" and all that follows through "the Administrator," and inserting in lieu thereof the following: "When a veteran dies—

"(1) who was in receipt of compensation (or but for the receipt of retirement pay would have been in

receipt of compensation) or who was in receipt of pension; or

“(2) in the case of a veteran of any war or a veteran who was discharged from the active military, naval, or air service for a disability incurred or aggravated in line of duty, whose body is held by a State (or a political subdivision of a State) and with respect to whom the Administrator determines—

“(A) that there is no next of kin or other person claiming the body of the deceased veteran; and

“(B) that there is not available, from the deceased veteran's estate or otherwise, sufficient resources to defray the cost of the burial and funeral of the deceased veteran,

the Administrator.”.

SEC. 2. The amendment made by the first section of this Act shall take effect with respect to deaths occurring after September 30, 1982.

97TH CONGRESS
2D SESSION

H. R. 6041

To amend title 38, United States Code, to authorize the Administrator of Veterans' Affairs to furnish a burial flag to the next of kin of persons who are buried in Arlington National Cemetery or in national cemeteries administered by the Veterans' Administration but who are not currently eligible for burial flags.

IN THE HOUSE OF REPRESENTATIVES

APRIL 1, 1982

Mr. SAM B. HALL, Jr. introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to authorize the Administrator of Veterans' Affairs to furnish a burial flag to the next of kin of persons who are buried in Arlington National Cemetery or in national cemeteries administered by the Veterans' Administration but who are not currently eligible for burial flags.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That section 901 of title 38, United States Code, is amended by adding at the end the following new subsection:

“(e) The Administrator shall furnish a flag to drape the casket of each deceased person who is buried in Arlington

National Cemetery or in a national cemetery under eligibility for burial under section 1002(6) of this title. After the burial, the flag shall be given to the next of kin or to such other person as the Administrator considers appropriate."

SEC. 2. The amendment made by the first section of this Act shall apply with respect to burials after September 30, 1982.

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97th CONGRESS2d SESSION

H.R. _____

(Original signature of Member)

To amend title 38, United States Code, to provide that payment of veterans' compensation, dependency and indemnity compensation, and pension shall be suspended in a case in which the beneficiary has received another financial settlement for the same injury until the amount of the settlement has been recouped.

IN THE HOUSE OF REPRESENTATIVES

19____

Mr. MONTGOMERY introduced the following bill; which was referred to the Committee on _____

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

BEST COPY AVAILABLE

That (a)(1) chapter 51 of title 38, United States Code, is amended by adding at the end the following new section:

"§3023. Suspension of benefit payments when a financial settlement has been made

"If an individual receives any money or property of value pursuant to an award in a judicial proceeding based upon, or a settlement or compromise of, any cause of action for damages for an injury to the individual or for damages for the death of any other individual in a case in which the individual is entitled to benefits under this title arising from the same injury or death, such benefits payable under this title shall not be paid for any month following a month in which any such money or property is received until such time as the total amount of such benefits that would otherwise have been payable equals the total of the amount of the money received and the fair market value of the property received."

(2) The table of sections at the beginning of that chapter is amended by adding at the end the following new item:

"§3023. Suspension of benefit payments when a financial settlement has been made."

(b) Section 410(b) of that title is amended by striking out paragraph (2) and redesignating paragraph (3) as paragraph (2).

SEC. 2. The amendments made by the first section of this

Act shall take effect with respect to judicial proceedings and claims and settlements of causes of action that become final after September 30, 1982.

STATEMENT OF
DOROTHY L. STARBUCK
CHIEF BENEFITS DIRECTOR
VETERANS ADMINISTRATION
BEFORE THE
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
HOUSE COMMITTEE ON VETERANS' AFFAIRS

April 22, 1982

Mr. Chairman and members of the Subcommittee: I am pleased to be here this morning to discuss proposed legislation that would affect programs administered by the Department of Veterans Benefits.

H.R. 5709

We strongly favor the enactment of H.R. 5709, a bill, introduced by the Committee Chairman at our request, to provide a cost-of-living increase in compensation and dependency and indemnity compensation (DIC) rates and make cost-saving improvements in the compensation and pension programs.

Section 101 would increase, by 8.1 percent, the basic rates of compensation as well as the higher rates for certain specified disabilities. Section 102 would increase, by a like percentage, the rates of additional compensation for dependents,

and section 103 the annual clothing allowance. Sections 104 through 106 would increase DIC rates for surviving spouses and children by 8.1 percent.

The Veterans Administration has periodically recommended cost-of-living increases in compensation and DIC benefits to assure that our programs remain responsive to changing economic conditions. We support increases designed to offset inflation's erosion of the purchasing power of these benefits. The percentage increase in H.R. 5709 is based on the estimate of the cost-of-living adjustment to be made for Social Security and VA pension benefits at the time the proposal was submitted. We will support an increase based on the identical percentage adjustment made in Social Security benefits. These rate increases would be effective October 1, 1982, and would result in fiscal year 1983 costs of \$771 million, if the 8.1 percentage holds firm.

Mr. Chairman, section 201 of the bill would amend section 3104 of title 38, relating to the prohibition against duplication of benefits. Under our regulations, a veteran rated from 60 to 90 percent disabled under the rating schedule who is unemployable as a result of his or her service-connected disability may be rated as totally disabled by reason of individual unemployability. In the event a veteran is receiving

other Federal monetary benefits for disability or retirement, our proposed amendments would limit monthly compensation to the amount payable on the basis of (1) the veteran's schedular rating or (2) the amount payable on the basis of the unemployable (total) rating, reduced by the amount of other Federal benefits for that month, whichever is the greater. This would affect those veterans in receipt of benefits under Title II of the Social Security Act and veterans in receipt of benefits under other Federal disability and retirement programs, such as black lung, railroad retirement, or civil service retirement.

Veterans receiving Social Security old-age or disability benefits, or other Federal disability or retirement benefits, are receiving these because of individual circumstances which removed them from the job market. In these cases, the veteran is already receiving one Federal benefit as a result of his or her condition. This duplication of benefits based on an individual not being employable is an unwarranted expenditure of Government funds. Especially today, when Federal budgetary restraint is critical, the American taxpayer should not be expected to support the pyramiding of

Federal benefits based on unemployability. At the same time, we recognize the commitment made to veterans suffering from service-connected disabilities. This proposal would reduce the amount of compensation payable to a veteran by the amount of other Federal benefits received for that month, but never below the amount payable on the basis of the veteran's schedular rating.

Under this section, reductions would apply to veterans on the rolls on or after October 1, 1983. Fiscal year 1984 savings of \$282.5 million would result.

Section 202 of the bill would amend section 315 of title 38, relating to payment of additional compensation for dependents, by changing from 30 to 50 percent the level of disability required for payment of such compensation. Under current law, veterans rated 30 percent or more disabled receive additional compensation for dependents. Amounts are prorated according to the percentage of disability. Until 1978, the additional payment was made only to the most seriously disabled veterans, those rated 50 percent or more disabled. Over the objections of this Agency, however, Congress reduced the level of required disability to 30 percent.

This was a poorly targeted liberalization for a group of veterans whose earning capacities were not substantially impaired, and added short and long-range costs to the compensation program. Projected savings for fiscal year 1983 total \$135.3 million.

Section 301 would add a new section 3011 to chapter 51 of title 38, relating to applications, effective dates, and payments. The new section would provide for the commencement of the period for which compensation, DIC, and pension benefits are paid to be the first day of the month following the month in which the award is effective.

Deferring the commencement of the payment period would not change the effective date of the benefit, which is important for a variety of purposes. For example, the special higher payment under section 3110 of title 38 to certain surviving spouses at the veterans' rate at time of death for the first month of entitlement to death benefits, would continue to be made.

We propose this section to be effective July 1, 1982. It would achieve cost savings of approximately \$3.4 million in fiscal year 1982 and \$28.8 million in fiscal year 1983.

Section 302 would, effective October 1, 1982, amend section 3012 of title 38, relating to effective dates for reductions and discontinuances. Where a benefit is to be reduced or discontinued by reason of a dependent's or survivor's marriage or death, or a veteran's divorce or annulment, the effective date for reduction or discontinuance would be the last day of the month in which the event occurred. Under current law, this date is the last day of the calendar year. This means that a veteran or survivor may receive benefits intended for the support of dependents for as many as eleven months after the beneficiary is no longer responsible for the dependent's support. This is inconsistent with other title 38 provisions relating to reductions and discontinuances. We anticipate savings of \$3.2 million during fiscal year 1983.

Section 303 of the bill would amend section 3020 of title 38, relating to the payment of benefits, to authorize the payment of need-based VA pension benefits, except protected old-law pension, in round dollar amounts.

Most pension payments are made in dollars and cents amounts. This provision, effective July 1, 1982, would grant authority to the VA to round pension benefit payment amounts to the next lower dollar, prior to certifying those amounts to Treasury.

Savings are estimated at \$1.4 million in fiscal year 1982 and \$10.8 million in fiscal year 1983.

Section 304 would amend section 501 of title 38, relating to definitions applicable to the non-service-connected pension programs. For the purpose of the improved pension program, the definition of "child" would include children up to the age of 19 if they are attending secondary school, but would not include college students over the age of 18. This amendment would not affect the eligibility of persons who, before reaching age 18, become permanently incapable of self-support.

Section 304 would thus terminate the eligibility of veterans and surviving spouses for additional pension based on children's college attendance during ages 18 to 23, as well as the eligibility of surviving children in their own right, when the children reach age 18 after September 30, 1982. However, the eligibility of a child currently eligible would be protected during the child's uninterrupted continuation of college attendance, subject to certain limitations. First, benefits would not be paid for the summer months--May through August--beginning in 1982. Second, that portion of the improved pension benefit attributable to the child, or the entire benefit if paid in the child's own right, would be held

to the August 1981 level, or that of a later month if deemed appropriate in a particular case (for example, January 1982 might be appropriate if eligibility begins in December 1981), reduced by 25 percent for the months of September 1982 through April 1983, by 50 percent for the months of September 1983 through April 1984, and by 75 percent for the months of September 1984 through April 1985. No benefits would be payable after July 1985.

These provisions would apply both to pensioners (veterans, surviving spouses, and surviving children) under the improved pension program and those receiving protected pension under section 306(a) of Pub. L. No. 95-588.

The amendment to title 38 would be effective October 1, 1982, and the other limitations and reductions would take effect upon enactment. Savings are estimated as \$13.4 million in fiscal year 1983.

Mr. Chairman, I would like to turn now to the other bills on which you asked me to comment--H.R. 4308, H.R. 5144, H.R. 6040, H.R. 6039, and H.R. 6041.

H.R. 4308

H.R. 4308 would extend from one to seven years the period following the date of separation from active service during which progressive muscular atrophy or amyotrophic lateral

sclerosis must become manifest to a degree of 10 percent or more to be presumed "service connected" for VA benefits purposes.

We advised the Committee by letter dated March 18, 1982, of our opposition to this measure.

Existing law provides, with respect to veterans who served at least 90 days during a wartime period, that certain chronic diseases becoming manifest to a degree of 10 percent or more within one year from the date of the veteran's discharge are presumed service connected. With respect to active tuberculosis and Hansen's disease, a three-year presumptive period is provided. For multiple sclerosis, the period is seven years. Other special presumptions apply regarding tropical diseases and certain diseases suffered by former prisoners of war. Of course, if sound medical judgment supports a finding that a particular disease had its inception in service, service connection can be granted without reference to the presumptive periods.

Amyotrophic lateral sclerosis (ALS) is a disease involving degeneration of nerve cells either in the brain, the brain stem, or the spinal cord, and is characterized by atrophy and fibrillation of the muscular system of the body. It

occurs, generally, in the older age group and is a steadily progressive and devastating illness. In most cases, diagnosis is made within 6 months of the initial symptom. Progressive muscular atrophy is not a recognized disease entity and would not, therefore, be the basis for an award of service connection. However, progressive spinal muscular atrophy, a disease of the spinal cord, is a recognized disease entity that is closely related to ALS. It is also progressive.

Neither ALS nor progressive spinal muscular atrophy should be confused with multiple sclerosis (MS), for which the presumptive period is 7 years. MS is a disease of younger people and is characterized by remissions. MS can be very difficult to diagnose.

We believe there is no scientific justification for extending the 1-year presumptive period currently applicable to ALS and progressive spinal muscular atrophy. Unlike MS, both are easily diagnosed early in their histories. Existing law and regulations are adequate to permit findings of service connection in deserving cases.

We have no data on which to base an estimate of the cost of H.R. 4308 but believe that costs in any fiscal year would be insignificant. This is because ALS and progressive spinal muscular atrophy are relatively rare disorders.

H.R. 5144

H.R. 5144 would amend section 101(22) of title 38, relating to the definition of "active duty for training," in order to qualify certain Senior Reserve Officers Training Corps (ROTC) members for compensation benefits. The bill would include within the definition of "active duty for training" annual training duty to which the ROTC member has been ordered for 14 days or more.

By virtue of section 101(24), a ROTC member who was disabled from an injury or disease incurred in the line of duty during annual training duty would, if H.R. 5144 is enacted, have the requisite "active military, naval, or air service" that is a predicate for an award of compensation under chapter 11 of title 38.

ROTC programs generally require the college student to enlist in a reserve component, but the timing of the enlistment varies from program to program. The Navy program requires enlistment prior to any practice cruise, but the Army two-year program requires a 6-week summer camp before reserve enlistment, and the Air Force requires summer camp between the second and third college years (also before reserve enlistment). This is significant because our current interpretation of "active duty for

training" permits payment of compensation if the ROTC member who has actually enlisted in the reserves suffers a line-of-duty disability during annual training duty. For this group, H.R. 5144 is thus unnecessary. Those who have not yet enlisted are civilian members. H.R. 5144 would benefit this latter group, who by definition have not agreed to a military obligation.

The nature of the reserve commitment also varies among ROTC programs, but is generally for a period of from 4 to 6 years. The commitment terminates when the ROTC member is commissioned and enters on active duty. A member disabled during summer camp or while on a practice cruise who cannot continue is ordinarily released from the ROTC program and discharged from the reserve obligation, regardless of whether he or she is a regular or contract member. In these cases, the member is eligible for Federal Employees Compensation by virtue of section 8104 of title 5, United States Code. If VA compensation is also payable, title 5 requires an election between the two benefits.

According to Department of Labor information, few ROTC members receive Federal Employees Compensation. We believe that the enactment of H.R. 5144 would have insignificant benefit and administrative costs in any fiscal year.

We believe that ROTC members are adequately covered with respect to injuries and diseases incurred while on annual training duty. We oppose this measure because it would place the VA in the position of compensating individuals who have not incurred a military obligation.

H.R. 6040

Next, I would like to discuss H.R. 6040, a bill to expand eligibility for burial benefits in cases where veterans' deaths are non-service connected. H.R. 6040 would authorize payment of up to \$300 in burial and funeral expenses in cases of indigent veterans whose bodies are held by a State, or political subdivision thereof, and who were either wartime veterans or were discharged from active service for disabilities incurred in or aggravated by service, but at death were not eligible for disability compensation or pension. Each case would require the VA to determine that no next of kin was claiming the deceased veteran's body and sufficient funds were not available from the veteran's estate, or other sources, to defray burial and funeral expenses. The amendment proposed in this bill would take effect with respect to deaths occurring after September 30, 1982.

Present law provides for reimbursement of up to \$300 towards funeral and burial expenses of veterans whose deaths were non-service connected if they were eligible for disability compensation or pension at death or who died while

hospitalized in VA facilities. This restrictive eligibility criterion was imposed as a cost-saving measure under provisions of the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35.

Our primary objection to this bill is that our experience with the burial of indigent veterans does not suggest a national problem of the magnitude to warrant remedial legislation. Administering the bill's provisions would be unduly burdensome, for each case would necessitate a search for next of kin and a determination of the extent and value of a veteran's estate, regardless of whether benefits were eventually payable. This would result in disproportionately high administrative costs. For the foregoing reasons, the VA opposes enactment of H.R. 6040.

We estimate enactment would result in added benefit costs of less than \$1 million in any fiscal year and administrative costs of less than \$100,000 for any fiscal year.

H.R. 6039

H.R. 6039 would expand eligibility for benefits at DIC rates under section 410(b) of title 38. This subsection provides for a limited departure from the principle that DIC is payable only for service-connected death. Benefits at DIC rates are paid even though the veteran's death is non-service connected, but only if the veteran was in receipt of compensation

at the total rate for 10 years or more, or continuously for at least 5 years since discharge, immediately prior to death. H.R. 6039 would extend eligibility to survivors of veterans whose total ratings were in effect for a lesser period because of VA error.

We interpret the Congressional intent of making the greater DIC payment available to this particular group of survivors as recognition of a family's dependence upon the service-connected benefit for total family support over a period of ten years.

Because of the veteran's ability to call attention to any error--real or perceived--within a ten year period, we do not favor the enactment of H.R. 6039, even though its enactment would result in insignificant benefit costs during any fiscal year.

H.R. 6041

H.R. 6041, to which I will now turn, is a bill to require the VA to furnish burial flags for persons buried in Arlington National Cemetery or in a National Cemetery under VA jurisdiction, if the person is buried under the authority of section 1002(6) of title 38. Currently, we furnish burial flags to drape the caskets of all wartime veterans, peacetime veterans

with service after January 1955, and certain other peacetime veterans. We also furnish flags if the persons died on active duty. We do not furnish flags for dependents or survivors or other non-veterans.

Arlington National Cemetery is under the jurisdiction of the Department of Defense. Certain veterans can be buried there as well as certain Federal officials who are not necessarily veterans. If an individual is eligible for burial at Arlington, certain of the individual's dependents and survivors may also be eligible. H.R. 6041 would require us to furnish flags to drape caskets of these dependents and survivors as well as for the non-veteran officials.

H.R. 6041 would also require us to furnish flags for those individuals buried in VA National Cemeteries by virtue of the Administrator's discretion under section 1002(6). To our knowledge, the former Administrator exercised this discretion only once, in the case of a former State Department official.

We believe that the VA's authority to furnish burial flags should continue to be limited to veterans' burials--and, of course, the burials of those whose deaths occur during active duty--and should not be expanded to include non-veterans.

Both benefits costs and administrative costs of this measure would be insignificant.

Tort Award Setoffs

Included among the topics for today's hearing is a draft proposal to require offset of tort judgments or settlements from VA benefits. The impact of such a measure would fall upon the compensation and DIC programs, inasmuch as entitlement to pension and death pension is need-based and would already be subject to adjustment where the pensioner received a tort judgment or settlement.

This would introduce the concept of disentitlement to benefits for service-connected disability or death based upon receipt of income in the form of tort damages from a source outside the Government. There is currently authority for offsetting compensation benefits under 38 U.S.C. §§ 314(t) and 351, and DIC benefits under 38 U.S.C. § 410(b). The proposal would extend the instances in which offset would be required into the area in which the Government has provided for veterans and their survivors where disability or death was incident to service. Currently, this is done without regard to whether some other entity would be financially liable.

As drafted, the proposal would require offset of tort damages from compensation or DIC. Whether it is also intended to affect eligibility for the myriad of other benefits flowing from a determination of service connection, ranging from medical care for the veteran and sometimes his dependents, to vocational rehabilitation for the veteran or educational assistance to family members in certain cases--items which may be reflected in some manner in the total tort award--would be in issue. We believe the proposal warrants very studious review if it is to be seriously considered by the Subcommittee.

Mr. Chairman, this concludes my prepared testimony. I would be happy to answer any questions.

Questions from Chairman Hall

- Question #1: On page 7 of your statement, you indicate section 304 of H. R. 5709 would be limited to "Improved Pension". On page 8, you state it would also apply to section 306(a) protected pension. Which interpretation do you intend?
- Answer: On page 7 of my statement I said that section 304 of H.R. 5709, 97th Congress, would be "applicable to the non-service-connected pension programs" (emphasis supplied). I then proceeded to illustrate the effect of section 304 on the improved pension program and concluded, on page 8, that the provisions of section 304 would apply in the same manner to both improved pension and protected pension under section 306(a) of Public Law 95-588. I regret any confusion that the wording of my testimony may have created.
- Question #2: In your comment on the Tort Award Set-Off draft bill, you ask whether it is intended to affect eligibility to benefits other than compensation and Dependency and Indemnity Compensation. Clearly the proposal does not so intend. What is your position on the proposal as so limited?
- Answer: As written, the draft bill would require that the VA offset any tort award or settlement against "benefits under this title arising from the same injury or death" (emphasis supplied). A reasonable interpretation of that phrase would include all benefits flowing from a determination of service-connection. If the draft bill were specifically limited to compensation and DIC, we would be inclined to view it more favorably, provided that the offset amount is limited to that portion of damages awarded for loss of future earnings or support. Whether this determination can be reasonably made should be further studied.
- Question #3: Do you believe a claimant should be able to avail himself of multiple remedies?
- Answer: In our society, multiple sources of recovery for accidental disability or death are a fact. A deceased service member's survivor may receive VA benefits, Social Security benefits, a tort settlement, and insurance proceeds. Because there are so many "remedies" that may be available, which can affect different VA benefits, there can be no simple "yes or no" answer provided.
- Question #4: Do you believe a court finding that disability or death was caused by a tortfeasor should have any effect on a determination of service connection? Should it have any effect on the compensation flowing from that service connection?
- Answer: The determination of service-connection for a disability or death is independent of any consideration as to the rate of

compensation payable. As long as the veteran was not engaged in wrongdoing when the disability was incurred, and as long as the survivor claimant was not involved in causing the veteran's death, the fact that disability or death was caused by a tort-feasor has no bearing on the issue of service-connection. The issue as to whether compensation or DIC should be offset when the tort recovery is received should be further studied.

Question #5:

You say that you oppose H.R. 5144 because it would place the VA in the position of compensating individuals who have not incurred a military obligation. I believe that you now pay DIC to survivors of such ROTC members who are killed during summer camp. Is it not inconsistent to pay VA benefits to survivors but oppose paying compensation to ROTC members who are severely disabled while in training?

Answer:

Dependency and Indemnity Compensation was the product of an effort to reform five existing federal programs for survivors' benefits. In the consolidation process DIC was extended to survivors of ROTC members who died as a result of annual training duty. No such multiplicity of programs exists for compensating injuries or diseases incurred during annual training duty. If an ROTC member enlisted in a reserve component prior to incurring disability, compensation is available from the VA. If the member had not enlisted prior to incurring disability, the Federal Employees' Compensation Act provides benefits. We see no necessity for passage of H.R. 5144.

Question #6:

You say that you are opposed to H.R. 6041 because it would require you to furnish burial flags to dependents of former servicemen who are buried in Arlington Cemetery. If H.R. 6041 were amended to provide that VA would provide flags only for individuals buried in VA national cemeteries under section 1002(6) of title 38 and did not refer to burials at Arlington, would you still oppose the bill?

Answer:

Under the provisions of 38 U.S.C. 1002(6) the Administrator of Veterans' Affairs has discretionary authority to designate any person or class of persons as eligible for burial in a VA national cemetery if eligibility is not otherwise established. Since this discretionary authority has not and would not be exercised in a frivolous manner, the honor conferred upon such individuals or classes should also include the Nation's flag. If H. R. 6041 were amended along the lines you propose, restricting the issuance of flags only for persons buried in VA national cemeteries under 38 U.S.C. 1002(6), the primary reason for our objection would be overcome.

Question #7:

I note you base your objection to H.R. 6040 on administrative difficulty. Do you consider the proposal to be basically equitable or inequitable? Don't you think it is more important to decide whether this is the right thing to do, rather than whether or not it is easy to do? When you mention administrative considerations, isn't it true that you and your department would establish the administrative procedures and couldn't you set us some reasonable rules, such as requiring certified statements from the undertaker or county official relating to the unclaimed body and to the lack of assets of the deceased to cover the burial?

Answer:

H.R. 6040 cannot be viewed in terms of being basically equitable or inequitable. The burial allowance is a need-based program and Congress has determined that need is shown if, at the time of death, a veteran was entitled to receive compensation or pension. When eligibility requirements are established for any benefit, certain individuals are excluded. To classify such an exclusion as equitable or inequitable is improper. In the current period of fiscal restraint at the federal level the administrative cost of providing a new benefit must clearly be considered in relation to the need for that new benefit. Local governments currently have provisions for the burial of indigent persons. It would seem inappropriate to shift this responsibility to the federal government simply because a veteran had rejected or been rejected by his family or friends. It is always our goal to establish administrative procedures which are reasonable. However, the provisions of H.R. 6040 would appear to require considerable effort on the part of the Veterans Administration before a conclusion would be reached that the VA should pay the burial allowance in the case of unclaimed bodies. The administrative cost in an individual case could logically exceed the burial allowance itself.

Question #8:

You say that you opposed H.R. 6039 because a veteran, during his lifetime, has the ability to call attention to a VA error. How do you justify shifting the burden of proof for correcting your error to the innocent victims of that error? Do you consider this type of situation proper for consideration of section 210(c) of title 38, United States Code? Please give your rationale for this answer.

Answer:

The legislative history of 38 U.S.C. 410(b) shows that its purpose was to provide a higher rate of death benefits to survivors who had become financially dependent upon compensation paid at the total disability rate during the veteran's lifetime. We interpret the time limits established in Public Law 95-479 setting up this provision as fixing the 10 year limit as a necessary precursor to entitlement to DIC. The Congress could have chosen any period or no period for this new entitlement. Since we are not here dealing with a service-connected

death, but rather with the establishment of financial dependence, we feel that General Counsel Opinion No. 2-81 correctly interpreted the law. That opinion essentially stated that nonreceipt of 100 percent compensation for the required period, regardless of the reason, could not establish financial dependence upon that benefit. Although we support use of the equitable relief authority under section 210(c) of title 38 in appropriate cases, we do not believe it should be used to confer entitlement.

Question #9: In discussing section 201 of H.R. 5709, you speak of schedular ratings and individual unemployability ratings as if they are based on different sources. Aren't all ratings based on the rating schedule and isn't the schedule your only basis for evaluations of disabilities?

Answer: The term "schedular rating" applies to those disability evaluations specifically delineated by percentage in 38 CFR 4.71a through 4.150. These percentage evaluations are assigned to various levels of impairment within each specifically coded disability. Total ratings based on individual unemployability are not disability specific, but rather may be assigned for any disability or combination of disabilities if certain requirements are met. The provisions for both schedular and unemployability ratings are contained in the same rating schedule which is the only one used by the VA for evaluating disabilities.

Question #10: Aren't the criteria of a schedular evaluation of 100% for neuropsychiatric conditions identical to the individual unemployability criteria for other disabilities?

Answer: Most disabilities have demonstrable and measurable effects on an individual's ability to function. However, neuropsychiatric disorders are generally measurable only on the effects they have with regard to social and industrial adaptability. In this respect, veterans who have neuropsychiatric disorders which render them unable to obtain or retain substantially gainful employment are generally rated totally disabled.

Question #11: Aren't many other veterans rated totally disabled, other than under individual unemployability, also receiving social security, railroad retirement, or civil service retirement? Do you also propose reducing their compensation? If so, by what factor? If not, why not?

Answer: Many veterans with total ratings based on the level of their specific disability and not based on their individual

employability or unemployability are also receiving other federal benefits based on disability or retirement. It is not proposed to reduce their compensation. Scheduler disability evaluations are based on average impairment of earning capacity, whereas unemployability ratings are based on the circumstances of individual veterans. We would not favor reducing the compensation of a veteran who is so severely disabled that the average person in the same situation would be unable to pursue a substantially gainful occupation.

Question #12: Would you not say that those veterans rated under individual unemployability are demonstrably the more economically disadvantaged of the totally disabled veterans?

Answer: It is extremely difficult to say that a veteran with a disability so severe that it would render the average person unable to work has an economic advantage over a veteran with a less severe disorder which, in his own particular circumstances, renders him unemployable.

Question #13: How do you justify singling out the most economically disadvantaged veterans for reduction, while permitting those totally disabled from neuropsychiatric conditions and those receiving federal benefits with other 100% ratings to enjoy compensation as well as other retirement benefits?

Answer: There is a longstanding policy against duplication of Federal benefits when entitlement under different programs may be established on the same or similar basis. The law currently prohibits the concurrent payment of disability compensation and military retired pay because both Federal benefits are based on the same period of military service. Similarly, Federal employees must elect between VA compensation and benefits under the Federal Employees Compensation Act if those benefits are payable for the same disability. Veterans must also elect between compensation and pension since both benefits are based on disability and military service. These prohibitions against duplication of payment are intended to prevent the pyramiding of Federal benefits to a level exceeding the Government's obligation to the individual.

A veteran who receives Social Security or a Federal disability or retirement benefit is generally unable to re-enter the job market and may, therefore, be considered unemployable. If that same veteran is also entitled to increased compensation because of a determination that his service-connected disability renders him unemployable, it is the view of the Veterans Administration that this constitutes a duplication of Federal benefits based on unemployability, which is contrary to present policy.

Question #14:

With regard to your proposal to round down pension payments to even dollars, isn't pension an annual benefit under title 38? Don't you already round the annual rate into even dollars by rounding annual income? If we round down the monthly check, wouldn't it really be a second rounding? Do you pay some beneficiaries less frequently than monthly? Are not these the pensioners with higher incomes and would not your proposed rounding have less impact on them? Is it not true that this rounding could cost a pensioner \$11 a year in pension for only a \$1 increase in yearly income? Doesn't your rounding provisions appear to hit hardest those with the least income?

Answer:

Pension is a periodic payment made to veterans because of service, age, or non-service-connected disability, or to a surviving spouse or child because of the veteran's nonservice-connected death. The rate of payment for any twelve month period is based on the payee's countable income for that period.

When the maximum annual pension rate is computed based on Social Security cost-of-living increases, and the result includes a fraction of a dollar, the rate is adjusted to the next higher dollar amount. When the computation of a payee's annual income includes a fraction of a dollar, the income is adjusted to the next lower dollar amount. Both adjustments are to the payee's advantage. If the current proposal is enacted, it would provide authority for a third rounding.

Pensioners with countable income near the maximum annual pension rate are paid less frequently than monthly. Pensioners whose countable income is \$120 or more below the applicable maximum rate generally would lose a fraction of a dollar monthly under the current rounding proposal. Those whose annual income is within \$120 of the maximum rate would generally lose less in total pension dollars than most other payees, but would also lose a greater percentage of total pension entitlement. The most any improved pension payee could lose because of the rounding proposal would be \$10.12 annually in pension benefits. Any other loss would be due to an increase in countable income.

Questions from Mr. Wylie

Question #1:

Budget material submitted to the Congress contained statements that 30% and 40% disabilities of veterans were rather minor in nature and were involved with such things as flat feet. To the contrary, I know that a person blind in one eye might get 30% and a below the knee amputee gets 40%. Do you consider such disabilities as minor?

Answer:

We regret the unfortunate choice of words used in the cited budget material. We do not regard the disabilities you mentioned as minor. However, it should be remembered that the rating schedule percentages are based on average impairments of earning capacity. We are not aware of any veteran rated 30- or 40- percent disabled whose ability to support his or her family would be more than marginally impaired by our proposal. Additional compensation for dependents of veterans who were less than totally disabled was first granted by Congress in 1948. This benefit was originally limited to veterans whose service connected disabilities were rated 60 percent more disabling. The Congress recognized that a serious disability is more difficult to overcome when there is mental strain concerning family obligations. The legislative history indicates that another reason for limiting the additional benefits to the seriously disabled was the realization that many veterans of this group are not in a position to supplement their compensation through steady employment. Upon further consideration of this subject in 1949, the necessary degree of disability for entitlement to additional compensation for dependents was reduced to 50 percent. Compromise legislation was enacted in 1978 which reduced the requisite level of disability for the dependency allowance to 30 percent. However, since veterans rated less than 50 percent disabled are likely to be fully employed and in a position to adequately provide for their families, the current disability requirements for the dependency allowance do not appear to be consistent with the benefit's basic rationale.

Question #2:

With regard to H.R. 6040 on burial benefits for certain indigent veterans, I am aware that press stories have overplayed the problem. But isn't it true, that you could administer a program like this with very little difficulty?

Answer:

If H.R. 6040 were enacted, the Veterans Administration would be required to undertake a search for next of kin or other persons who may be interested in claiming the body. If that search were unsuccessful, the VA would then have to determine the value of the veteran's estate and make a diligent effort to ascertain if there were other sources of funds which could defray the costs of funeral

and burial. Even though the number of eligible veterans would be few and the benefit cost small, the costs for man-hours to be expended in the determinations of eligibility are considered to be disproportionately large.

Question #3:

Rather than take away the dependency allowance for veterans pursuing vocational rehabilitation, wouldn't it have been more prudent to reduce such allowances for those veterans going to school under the basic GI bill. I am not saying that I favor such a proposal but I would like to have your comment.

Answer:

Elimination of the dependency allowance for training under Chapter 34 of title 38, United States Code, would have a greater economic impact in individual veterans than the current proposal to eliminate the allowance for vocational rehabilitation trainees under Chapter 31. The Chapter 31 enrollee would continue to receive a subsistence allowance at the single veteran rate and their training would continue to be fully subsidized. It is anticipated that approximately \$1,540 of tuition, books, fees and supplies would be subsidized for the average Chapter 31 trainee during FY 83. The Chapter 34 participant would have to be responsible for these expenses. Therefore, with this level of training support, eliminating the Chapter 31 dependent's allowance should not constitute a hardship for the Chapter 31 trainee nor deter their participation in the vocational rehabilitation program.

Question #4:

It now appears that the cost-of-living since last October may have increased at a rate of less than 8.1%. Your testimony indicates that the Administration will support an increase in compensation somewhat lower than 8.1%. What is your latest projection?

Answer:

In accord with our goal of assuring that the compensation and DIC programs remain responsive to changes in the cost of living, we support rate increases equal to the percentage increase to be provided in the Social Security and VA pension programs, now established (for June 1982) at 7.4 percent. The estimated cost for fiscal year 1983 is now \$676.9 million.

Question #5:

The Paralyzed Veterans of America, The American Legion, The National Association for Uniformed Services and other groups support the idea of a seven-year presumption for service connection for "Lou Gehrig's Disease", otherwise known as amyotrophic lateral sclerosis. The VA does not support H.R. 4308 which would allow this presumption. Isn't there enough mystery about this disease to get you to change your mind? And wouldn't the cost be truly insignificant?

Answer:

Although the cause of amyotrophic lateral sclerosis is not currently known, this mystery is not a sufficient basis for extending to seven years the presumptive period for service-connection. Since this disease is generally diagnosed within six months of initial symptoms, and since it is not generally subject to extended periods of remission as with multiple sclerosis, the current one year presumptive period is believed to be more appropriate. Our determinations of service-connection are based on the best available medical knowledge and this was the reason for opposing a seven year presumptive period. Although the exact cause of the disease is not clear, the initial symptomatology shows up in a time period which makes the one year presumptive period sufficient.

Question #6:

The suggestion to reduce compensation cases in those instances where so-called unemployability may be involved has generated a lot of mail to the Congress. Almost all of it is in opposition. Some people have raised the question of why the idea only relates to federal and not private retirement. Could you please comment?

Answer:

Private retirement plans are generally contractual arrangements which are not funded by the Federal Government. The purpose of section 201 of H.R. 5709, 97th Congress, is to prevent the duplication of Federal benefits based on unemployability of the individual. We do not object to an individual having entitlement under one program of Federal benefits based on unemployability while simultaneously having entitlement under private programs for which he had contracted.

Question #7:

An FBI agent, according to my understanding, can retire after twenty years service. So can a District of Columbia policeman or fireman. Such a person could well be a veteran of the Vietnam War and be about 43 or 45 years old with a service-connected disability. That person is obviously still in the job market. If his disability becomes worse and he becomes "unemployable" is it right to deny him benefits that have been given to generations before him?

Answer:

Individuals should be entitled to the largest benefit payable by any one Federal program for which they are eligible based on unemployability. However, when entitlement is established under multiple Federal programs based on unemployability, benefits clearly exceed the Government's obligation. We see no reason to continue a system of duplicating Federal benefits simply because that system has existed in the past.

Question #8:

Your proposal to make the effective date of an award the first day of the following month sounds good at first glance. But what of the very seriously disabled veteran who is discharged on the first day of the month. Would he lose an entire month of compensation?

Answer:

Our proposal would have little or no impact on a veteran who is a military retiree, as he or she would receive retired pay for that period. We do not believe the impact on non-military retirees would be sufficient to cause hardship.

Comment on Testimony by Commander Wanamaker of the Retired Officers Association
(pages 3 and 4 of statement, re section 201 of H.R. 5709)

1. Regarding military retired pay: There is currently a statutory bar to the concurrent receipt of retired pay and compensation. We are giving further consideration to the question whether military retired pay should be encompassed by our proposal.
2. Re IRA withdrawals and tax benefits: IRA withdrawals and tax benefits are not encompassed by our proposal. IRA withdrawals are private sources of income; tax benefits are arguably Federal benefits but have no application to the duplication our proposal is intended to address.
3. Annuity or SBP benefit payable to veteran by reason of spouse's death: Such annuities are not paid by reason of the veteran's unemployability and are not encompassed by our proposal.
4. Ex-spouse's civil service retirement awarded to veteran in context of community property settlement: Again, this is not a Federal benefit payable to the veteran by reason of his or her unemployability and would not be encompassed by our proposal.
5. Effect on veteran's "total" rating for purposes of meeting the 10-year requirement for purposes of section 410(b) (benefits at DIC rates): Our proposal would not affect the unemployability rating per se and thus would not prevent a veteran from meeting the 10-year requirement of section 410(b).

TESTIMONY OF GABRIEL P. BRINSKY
AMVETS NATIONAL SERVICE & LEGISLATIVE DIRECTOR

Mr. Chairman, Members of the Committee, AMVETS is appreciative of this opportunity to express its views concerning the various Bills which will be considered by the Sub-Committee this morning. As requested, my oral testimony will be limited and we request that the complete statement be incorporated into the records.

We favor the enactment of the following Bills:

- HR-5144 which would amend Title 38 to make members of Senior Reserve Officers' Training Corp Programs who are injured during summer military camp eligible for compensation benefits administered by the Veterans Administration.
- HR-5874 which would amend Title 38 to prevent relatives other than spouses, children, and dependent parents from inheriting any part of the estate of a mentally incompetent veteran that was accumulated from benefits provided under laws administered by the Veterans Administration.
- HR-6039 which would amend Title 38 to correct the technical error with respect to entitlement to dependency and indemnity compensation.
- HR-6040 which would amend Title 38 to provide eligibility for burial benefits from the Veterans Administration for certain veterans whose remains are unclaimed.
- HR-6041 which would amend Title 38 to authorize the Administrator of Veterans Affairs to furnish a burial flag to the next of kin of persons who are buried in Arlington National Cemetery or in National cemeteries administered by the Veterans Administration but who are not currently eligible for burial flags.

We do not favor enactment of HR-4308 which would amend Title 38 to provide a seven-year presumptive period for progressive muscular atrophy or amyotrophic lateral sclerosis. In our opinion these neurological diseases are of such a nature that the presumption of seven years would be unwarranted medically.

Except for Title I which relates to an increase in compensation and dependency and indemnity compensation rate increases, we do not favor any of the remaining provisions of HR-5709. Particularly, we are of the view that an unemployable rated service-connected veteran should not have his compensation which he has earned by reason of service to his country reduced or adjusted by the amount of other Federal benefits which he may be entitled to receive.

This briefly, sets forth our views on the pending legislation. Our full statement goes into greater depth concerning each of the Bills under consideration. Thank you.

Section 3202(e) of Title 38 United States Code provides in effect that funds of a beneficiary which would escheat to the state will escheat instead to the United States.

This Section would be amended by HR-5874 to require that any funds deposited in the hands of a fiduciary derived from benefits payable to a mentally incompetent or insane V. A. beneficiary be limited in distribution, regardless of the law of descent and distribution of the residence State, to the surviving spouse, surviving children or surviving dependent parents of the beneficiary. In the absence of such survivors upon the beneficiary's death, the money would revert to the United States or the Veterans Administration.

We favor the enactment of this Bill. The hereditary succession provided is compatible with the nature of the source of the estate and is not inconsistent with statutes which define titles by descent.

HR-5144 would amend Title 38 U.S. Code, to make Members of Senior Reserve Officers' Training Corp Programs who are injured during summer military camp eligible for compensation benefits administered by the Veterans Administration. Under current law, DIC benefits are provided to the survivors of Senior Reserve Officers who die from injuries suffered during the summer military camp. Yet, there is no provision for the payment of a Senior Reserve Officer injured during a summer military camp. He is not entitled, under the present law, to disability compensation from the Veterans Administration. Instead, he is awarded whatever benefits to which he may be entitled as a Federal employee under the program administered through the Department of Labor.

We feel that this is an anomaly in the law. No other instance comes to mind where the survivors of military personnel enjoy a benefit to which the veteran as a creator of that benefit is not entitled to receive. We strongly urge enactment of this Bill which would make Members of the Senior Reserve Officers' Training Corp Programs injured during the summer military camp eligible for VA benefits.

While we normally favor liberalization of ratings in order to insure that the veteran receives every benefit to which he is entitled, we do not favor enactment of HR-4308.

Multiple sclerosis is the only neurological disease which presently has a seven-year presumptive period. The disease is often characterized by periods of remissions and exacerbations. The remissions frequently last for several years and it is extremely difficult to diagnose. Some of the typical early manifestations of the disease are: Loss of vision, diplopia, weakness and/or numbness of a single limb, vertigo, incoordination of gait, etc. What complicates making a diagnosis of this disease is the fact that many complaints such as fatigue, headaches, dizziness, weakness, etc., are experienced by healthy individuals as well and often are manifestations encountered in various other neurological diseases.

This is not true in the case of amyotrophic lateral sclerosis. This disease is more readily identifiable and generally diagnosed within three years from the onset of the symptoms. In fact, the life expectancy of a amyotrophic lateral sclerotic victim is less than seven years. As for progressive muscular atrophy, while this disease is a slow and progressive one, it is not difficult to diagnose. Accordingly, it is our view that the present presumptive period of one year is adequate for both diseases.

HR-6040 would provide eligibility for VA burial benefits for certain veterans whose remains are unclaimed. AMVETS favors this Bill but feels that it does not go far enough. We are of the opinion that the burial benefits payable before the reconciliation Bill of Public Law 97-35 Omnibus Budget Reconciliation Act of 1981 (H.R. 3982) should be reinstated.

The restrictions placed upon the burial allowance have greatly disturbed the veteran community. This benefit was first created by the World War Veterans Act of 1924 and has been in effect for more than half a century. It is a benefit which the veterans view as theirs and the only one that many of them will receive for their services rendered in the Armed Forces of the United States Government. We urge that this benefit be restored in its entirety.

We favor the enactment of HR-6041 which authorizes the Veterans Administration to furnish a burial flag to the next of kin of certain persons who are not currently eligible for burial flags.

We also favor the enactment of HR-6039 which would correct a technical error with respect to entitlement to dependency and indemnity compensation. As the current law reads, it provides for the payment of benefits to those who were in receipt of. This Bill would also add "or entitled to receive." Historically, in determining entitlement to benefits "entitlement to receive" is generally equated with "being in receipt of."

We have also been requested to comment upon a proposed Bill which would require offsetting from VA benefits the amount received from another financial settlement for the same injury or death. The proposed Bill would amend Title 38 to provide that payments of veterans' compensation, dependency and indemnity compensation, and pension be suspended in the event the beneficiary has received another financial settlement for the same injury until such time as the amount of the settlement has been recouped from the compensation, pension or from any DIC benefits.

AMVETS favors the enactment of such a Bill. The theory of entitlement to compensation or other benefits administered by the Veterans Administration is in general to compensate for the loss of average impairment in employment. The 1945 Schedule for Rating Disabilities employed by the Veterans Administration is predicated upon the basis that it compensates the veteran for average impairment in employment. Restitution for the loss of earning power by reason of disability is the basis utilized in the adjudication of claims or as determined by judicial or other processes.

There is also precedent for the adjustment of claims by recruitment or offset by the Veterans Administration. For example receipt of readjustment pay by members of Reserve Components is a bar to compensation until

such time an amount equal to 75 percent of the readjustment pay has been offset. More frequently encountered is the military disability severance pay. The receipt of severance pay based on disability precludes the payment of compensation by the Veterans Administration until an amount equal to the amount of disability severance pay is offset. The offset provision applies only to a disability which is the same for which compensation any severance pay entitlement has been established. As stated, we are in favor of the enactment of legislation providing for such recoupment.

In conclusion regarding HR-5709, we favor the provisions of Title I relating to compensation and dependency and indemnity compensation rate increases of 8.1 percent as being reasonable and realistic at this time.

We would add the reservation, however, that the increase in rates in compensation and DIC should not be less than the adjustments in Social Security or pension benefits which are required under the law and which would be made in July 1982. It is incompatible to conceive of increase in rates being greater in nonservice-connected disabilities or Social Security than those in disabilities incurred during service.

We are unequivocally opposed to Title II relating to compensation amendments which would discontinue payments of additional compensation for individual unemployability in cases where veterans are receiving other Federal benefits by reason of disability or retirement. Under its provisions an unemployable veteran receiving other Federal monetary benefits for disability or retirement would have his compensation limited to the amount payable on the basis of the schedular rating or the amount payable on the basis of the unemployable rating reduced by the amount of other Federal benefits, which ever is the greater.

While there is a policy against the concurrent payment of duplicate compensation benefits to veterans, as argued by the proponents of the Bill, this argument is filled with fallacies. In our view there is no duplication of benefits. Rather these are supplemental benefits. A veteran who is ratable under Paragraph 18 of the 1945 Schedule as totally disabled by reason of unemployability is entitled to disability compensation by reason of disabilities suffered during his military service. The assignment of a total rating based on unemployability is a determination of fact as to the extent of the disablement of the disabilities regardless of the schedular rating assigned. Thus, for all intent and purposes, a disability ratable as 60 percent which in fact is considered as rendering the veteran unemployable, is tantamount to a schedular rating of 100 percent. This benefit should not be affected by what other benefits the veteran might be entitled to generally created on a contractual relationship.

What is more, in our view, the constitutionality of this provision is gravely in doubt. It would discriminate against a veteran who was receiving a total disability rating and benefits such as Federal retirement from an individual who was rated as totally disabled but receiving retirement under a private plan. In the latter instance, more frequently than not, no contribution is made by the individual in building up his

retirement entitlement. In the case of Federal retirement benefits, the employee contributes to the retirement plan.

Apart from the constitutional questions which might be invoked, it appears blatantly inequitable to us to differentiate between veterans in similar circumstances except for the source of their benefits in addition to the disability compensation that they may be receiving based on unemployability.

Section 202 of the Bill would amend Section 315 of Title 38 relating to additional compensation for dependents by increasing from 30 to 50 percent the level of disability required for payment of such compensation.

The Veterans Administration has estimated that the number of 30 and 40 percent disabled veterans receiving dependent allowances approximate 315 thousand. Of this number, a sizable portion is the Vietnam veterans. As a group of veterans in need of the greatest assistance, the Vietnam veteran would be most affected by this provision. Accordingly, we oppose Section 202 of the Bill.

Title III provides for miscellaneous amendments. Amongst them, it calls for compensation, dependency and indemnity compensation, and pension benefits to be paid the first day of the month following the month in which the award is effective. The savings projected by the Administration would be approximately \$29 million in fiscal year 1983. We are of the view that the present laws and regulations relating to the effective dates of awards should remain in effect. They are compatible and consistent with the theory of the effective date of awarding monetary benefits. An award should be payable the day following the date of discharge from service or the claim has been timely filed. Any other concept would deprive the veteran of entitlement during a period when there is entitlement.

This concludes my testimony. Thank you.

Statement of

Max J. Beilke
Legislative Counsel

The National Association for Uniformed Services

Before the

Subcommittee On Compensation, Pension and Insurance

Committee on Veterans' Affairs

U.S. House of Representatives

April 22, 1982

H.R., 4308, H.R. 5144, H.R. 5709, H.R. 6039, H.R. 6040, and H.R. 6041

Mr. Chairman, and members of the subcommittee, I welcome the opportunity to present the views of the National Association for Uniformed Services to this distinguished panel.

The National Association for Uniformed Services (NAUS) is unique in that our membership represents all ranks of career and non-career service personnel and their wives and widows. Our membership includes active, retired, and reserve personnel of all seven uniformed services: Army, Navy, Air Force, Marines, Coast Guard, Public Health Service, and the National Oceanic and Atmospheric Administration. With such a membership, we are able to draw information from a broad base for our legislative activities.

The bills under consideration today will be covered in numerical sequence.

H.R. 4308 — NAUS supports the addition of amyotrophic lateral sclerosis (ALS) better known as "Lou Gehrig's Disease" to subparagraph (a) (4) Section 312, Title 38. The lack of full medical knowledge pertaining to origination and treatment of this dreadful debilitating disease lends itself to being included in Section 312. Medical science has not yet determined what triggers this disease or how long a time span is required before the first signs of physical impairment are recognizable. Many victims are originally mis-diagnosed or are correctly diagnosed long after the disease has actually begun its disabling effects.

H.R. 5144 — NAUS supports this bill. If members of the Senior Reserve Officer's Training Corps (ROTC) program are to enroll in ROTC it must be with the assurance that should they be injured while undergoing training, prior to commissioning, their government will compensate them through the VA benefit program. NAUS believes that injuries received and determined by an appropriate military body to be in the line of duty while participating in authorized military training should be compensable.

H.R. 5709 -- With the assumption that Congress is not going to place a total freeze on all entitlement, NAUS concurs in the H.R. 5709 proposals to increase disability compensation and Dependency and Indemnity Compensation (DIC) with one caveat. It is that the rate of increase not exceed the inflation adjustment factor used to adjust other federal entitlements.

H.R. 6039 -- NAUS has no objections to this technical error correction.

H.R. 6040 — NAUS concurs in providing Veterans Administration burial benefits for certain veterans whose remains are unclaimed.

H.R. 6041 — NAUS concurs in having the Veterans Administration provide burial flags to next of kin or to such other persons as deemed appropriate.

NAUS opposes the proposal to require that VA benefits be offset by the amount received in a financial settlement for the same injury or death. We do not believe the two can be equated in all cases. If negligence is proven in a court of law, and the negligent person, or persons ordered to pay damages, NAUS does not agree that a victim otherwise eligible for disability or death compensation should be denied it.

This concludes my brief statement. At this time, I am prepared to respond to questions.

STATEMENT OF
JOHN F. HEILMAN
NATIONAL LEGISLATIVE DIRECTOR
DISABLED AMERICAN VETERANS
BEFORE THE
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
OF THE
HOUSE VETERANS AFFAIRS COMMITTEE
APRIL 22, 1982

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the 710,000 members of the Disabled American Veterans, may I say that we deeply appreciate this opportunity to present our views on legislation relating to the Service-Connected Disability and Death Compensation Programs of the Veterans Administration.

H.R. 5709

Introduced in the House of Representatives on March 3, 1982 at the specific request of the Administration, this measure draws very "mixed reactions" from the DAV. I say this, Mr. Chairman, as the bill alternately proposes to both increase and decrease existing VA disability compensation benefit levels, playing, if you will, a cruel "good news/bad news" joke on hundreds of thousands of service-connected disabled veterans.

With your permission, I shall first address the "good news" provisions of this paradoxical measure.

Title I of H.R. 5709 would authorize an 8.1% across-the-board increase in basic disability compensation and DIC (service-connected death) benefit rates. The same percentage rate of increase would also be extended to the dependency allowances and, with one exception, to the special statutory awards and ratings that apply to the Compensation and DIC Programs, as well as to the VA's annual clothing allowance payable to certain service-connected veterans whose prosthetic or orthopedic devices cause unusual damage to clothing. The proposed increases carry an effective date of October 1, 1982 and would require \$771 million in increased budget authority in Fiscal Year 1983.

Put in more meaningful terms, Mr. Chairman, the benefit increases would range from an additional \$60 per year (\$5 monthly) for a veteran with a 10% service-connected disability to \$1,104 more per year (\$92 monthly) for a veteran who is determined to be 100% totally and permanently disabled due to service-connected disability.

Mr. Chairman, in any consideration of an increase in VA disability and death compensation payments, it is important to recall the principles upon which these programs were established:

Disability compensation paid to veterans attempts to represent, to the most practical degree possible, the average impairment in earnings capacity caused by service-connected disability. DIC benefits, on the

other hand, are intended to provide a measure of financial security to widows and children in view of the service-connected deaths of their husbands and fathers.

Over the years, this Subcommittee has been most diligent in its efforts to assure that the purchasing power of these benefits keeps pace with our society's rising cost of goods and services. The most recent adjustment of these rates (Public Law 97-66) represented the eighth such annual increase in as many years.

Looking at the rise in the Consumer Price Index (all urban consumers, seasonally adjusted) for each of the three months immediately following the last compensation adjustment (October, November, December, 1981), we see increases of 0.4%, 0.5% and 0.4%, respectively. During the first two months of 1982 the rate of CPI growth has been 0.3% and 0.2%.

Though it is perhaps a bit premature to characterize this recent downward movement in the CPI as a permanent "trend," we hope, as do all Americans, that it will continue. If this should occur, then obviously the actual CPI movement between October 1 of last year and September 30 of 1982 will be somewhat less than the percentage increase proposed in the pending bill.

Therefore, Mr. Chairman, in view of the "question mark" that presently surrounds the projected rate of CPI growth, the DAV has

taken the position of supporting an upward adjustment in the disability compensation/DIC benefit rates which can be defended in terms of restoring the loss of purchasing power that will actually have occurred by the proposed effective date of the Title I provisions.

Mr. Chairman, before leaving Title I, I do wish to make special note of the fact that in its provisions, H.R. 5709 does not include the "K" award set forth in Section 314(k), Title 38, USC. This is a special monthly benefit--presently \$62--paid in addition to the basic rates of compensation of certain veterans who have incurred the service-connected loss or loss of use of a single extremity or certain other body organs and functions.

This particular award has not always been included in prior compensation bills and was last increased to its present figure by Public Law 96-128, approved November 28, 1979. We therefore ask the Subcommittee to include the "K" award in any compensation bill that it may recommend to the full Committee.

Now for the "bad news."

Titles II and III of the bill would amend current law so as to reduce existing benefit levels for hundreds of thousands of service-connected disabled veterans across America. These ill-conceived proposals would negate benefit liberalizations recently

approved by the Congress and, in our opinion, do fundamental damage to program integrity, paving the way for future, equally horrendous deterioration.

Let us look at these proposals, Mr. Chairman. The following is what the Administration is asking this Subcommittee to recommend:

1. Substantial reductions in the monthly compensation checks of some 113,000 totally and permanently disabled veterans who have established that they cannot work due to their service-connected disabilities, if such veterans are in receipt of any other federal benefit payment based upon disability or retirement. The words "any other" mean just that--old age Social Security payments (OASI), disability Social Security payments (SSDI), civil service retirement pay, black lung benefits, railroad retirement pay, Post Office retirement pay, etc.
2. Elimination of the dependency allowance portion in the compensation checks now received by 314,000 veterans who are rated either 30% or 40% service-connected disabled.
3. Delaying the effective date of payment for an award of compensation and DIC benefits until the first day of the first calendar month following the authorizing action (currently payment entitlement commences the same day eligibility is established by a VA Rating Board).
4. Changing the so-called "end of year" rule which governs discontinuance of compensation payments due to a change in dependency status to the "end of month" rule (the effect--causing the payment reductions to occur anywhere from one month to eleven months sooner, depending upon the date the dependency loss occurred in a given calendar year).

Mr. Chairman, I cannot overemphasize the extent of DAV opposition to these benefit reductions proposals, especially those that would impact upon totally disabled "unemployable" service-connected veterans and those with 30% and 40% disability ratings.

Mr. Chairman, regarding the proposed offset in benefits for the totally disabled veteran, it is important to note that consideration for a 100% payment due to "unemployability" has been in the VA's Rating Schedule for over 50 years (the 1925 VA Rating Schedule provided for such consideration and the unemployability criteria as we know it today has existed since 1941 [extension number 4 of the 1933 Rating Schedule effective 11/15/41]).

To put it in the simplest of terms, the "unemployability" provisions of current regulation were designed to give VA the authority to authorize a 100% rate of payment to certain severely disabled veterans (60-90% service-connected disabled) who have established they cannot work due to their service-connected disabilities and who, because of the percentages assigned under the Rating Schedule and formula governing computation of combined ratings, cannot achieve a 100% schedular rating (and therefore a 100% payment).

In essence, then, the unemployability provisions of the Rating Schedule address (and correct) an anomaly--thereby

assuring that severely disabled service-connected veterans who cannot work can receive consideration for a total rate of payment, notwithstanding unintended deficiencies that exist in other portions of the Schedule.

It is the compensation benefits of these "fixed income" totally disabled veterans that the Administration wishes to reduce, in effect, literally taking away completely or reducing substantially other earned, paid-for federal entitlement.

Inconceivable as it may seem, the Administration is saying that a totally disabling combat disability and compensation received for such disability are grounds for taking away Social Security benefits that have been paid for during the years these veterans were able to work and be productive citizens. We would hope that the members of this Subcommittee and the Congress would agree with us in saying that there is not one iota of merit to such a preposterous assertion.

The DAV finds the proposal for elimination of dependency allowances of 30% and 40% disabled veterans to be equally lacking. These benefits were extended by the Congress just three years ago (P.L. 95-479) after careful consideration. Other than the obvious desire to "save" federal expenditures, the Administration has advanced no compelling arguments or justification for their removal.

Perhaps the Office of Management and Budget would care to explain to a veteran who lost a leg below the knee, or to a veteran with an empty eye socket (both 40% ratings), just why these additional "sacrifices" are necessary.

I shall not belabor the point, Mr. Chairman. We urge that the Subcommittee reject the proposed reductions in benefit levels for our nation's service-connected disabled veteran population.

H.R. 5144

Through appropriate amendment of Section 101(22), Title 38, USC, this measure proposes to extend eligibility for VA disability compensation benefits to members of Senior Reserve Officers Training Corps (ROTC) who are injured during annual (summer) training when ordered to such training for a duty period of 14 days or more.

Mr. Chairman, the DAV has not received any mandate on this subject from the delegates to its most recent National Convention and therefore has no official position on the pending bill.

However, we would note the following: Under current law, the widows and orphans of such ROTC personnel who are killed during such training periods are entitled to receive VA dependency and indemnity compensation (DIC) benefits. It would appear a logical

and equitable extension of current law to authorize disability compensation eligibility to such personnel for the occurrence of nonfatal injuries.

H.R. 6041

Through appropriate amendment of Section 902(a), Title 38, USC, this bill would provide eligibility for burial benefits to certain deceased veterans whose remains are unclaimed.

Mr. Chairman, as we understand the measure, it addresses a recently brought to light inequity associated with the nonservice-connected burial benefit restrictions instituted by Public Law 97-35, the Omnibus Reconciliation Act of 1981.

As you are aware, that Act modified the eligibility criteria for the VA's nonservice-connected burial allowance (\$300), restricting such awards to the survivors of wartime veterans who, at the time of their deaths, were in receipt of (or entitled to receive) VA disability compensation or nonservice-connected pension benefits.

Subsequent to P.L. 97-35, it was brought to the attention of this Subcommittee that the remains of a few deceased wartime veterans who (1) had no next of kin and who (2) did not meet the new eligibility criteria were in danger of not receiving a

timely, appropriate burial. The pending bill would insure that such situations would not arise.

The DAV supports passage of this measure.

H.R. 6041

Mr. Chairman, this measure, through appropriate amendment of Section 901 of Title 38, USC, proposes to authorize the Administrator of Veterans Affairs to furnish a burial flag to the next of kin of persons who are buried in Arlington National Cemetery or in National Cemeteries administered by the Veterans Administration but who are not currently eligible for burial flags.

The DAV has no objection to the passage of this legislation.

H.R. 6039

Mr. Chairman, this measure was introduced in the House of Representatives at the request of the Disabled American Veterans. It concerns an inequity that has come to our attention with respect to the "presumptive" DIC payments that were recently authorized by Public Law 95-479.

As you are aware, Public Law 95-479 authorized the payment of DIC benefits to the survivors of veterans whose deaths were not

service-connected, if such deceased veterans had been continuously rated as service-connected, totally disabled for ten or more years immediately preceding death, or if for a lesser period, were totally disabled for a period of not less than five years from date of discharge from service.

It has been recently held by the VA General Counsel, and now considered policy by the VA, that when such a totally disabled veteran dies, DIC is payable only in those instances where the veteran had actually been in receipt of compensation at the 100% rate for ten or more years. An exception is made if a veteran is not in receipt of compensation due to the receipt of military retirement pay. However, no concessions are made for those veterans who are found to have had entitlement to receive the 100% rate but, based upon the presence of a clear and unmistakable error in a previous VA decision, did not actually receive the compensation payment for the full ten years.

It is with this policy that the DAV takes issue. We feel that if the facts of a case are sufficient, and a veteran, except for VA error, would have been entitled to receive VA compensation at the 100% rate for ten years prior to death, entitlement to DIC payments should be extended.

VA General Counsel, however, has held that clear and unmistakable error in a previous decision cannot be declared posthumously to create entitlement to DIC benefits, as during the veteran's lifetime available remedies of law existed. Should the veteran have felt that the percentage evaluation for disability was arbitrarily low (the GC argues), these remedies could have been applied. The General Counsel also stated that if a clear and unmistakable error existed, then it would be very unlikely that it would have gone unremedied if the veteran exhausted all avenues of redress.

While there may be a degree of credence to this opinion, Mr. Chairman, we believe that such an argument cannot be applicable in all cases. We are reminded that not all veterans have or seek representation from the accredited service organizations and that there are areas of VA law, regulation and disability evaluations that are so technical in nature that the average veteran would not be in a position to question a VA decision.

Prior to the General Counsel's Opinion (March 24, 1981), the Board of Veterans Appeals (BVA) had latitude to correct a previous error for the purpose of establishing entitlement to DIC payments under Section 410(b)(1), and we are aware of one such decision. However, since publication of the General Counsel's Opinion, VA policy has been established which precludes BVA from

allowing DIC benefits in these circumstances. A recent decision made by the Board dealt with a service-connected veteran rated totally disabled for 9 years, 361 days immediately preceding death. An allegation of VA error that would have established an earlier effective date was dismissed by the Board as being moot, even though the allegation was correct.

Accordingly, Mr. Chairman, we respectfully request that the Subcommittee act favorably on H.R. 6039 for it would correct this inequity. There is no significant cost factor associated with this bill.

Draft Bill Proposing an Offset in Disability Compensation,
DIC and Pension Benefits

Mr. Chairman, this draft bill has not yet been introduced in the House of Representatives, but you have requested our views and we are pleased to comply.

The measure proposes to require that payments of disability compensation, dependency and indemnity compensation (DIC) and nonservice-connected pension benefits shall be suspended in a case in which the beneficiary has received another financial settlement for the same injury or death, and shall remain in such suspension until the amount of such settlement shall have been recouped.

The DAV must register its strong opposition to such a proposal.

Though the measure addresses the categories of disability compensation, DIC and nonservice-connected pension, we believe the primary impact of the bill would most frequently focus upon DIC recipients. The following is a "theoretical" example:

An active duty serviceman is under orders to proceed to a new duty station. On route to such duty station in his automobile, he is killed in an accident whereby a second party is found to be at fault. The widow of such veteran receives a financial settlement from the second party's insurance company. Under the proposed draft bill, the widow (or orphan) cannot commence to receive DIC benefits for the active duty in-service death of the veteran until such time that the payments withheld equal the amount of settlement received.

Mr. Chairman, this draft bill proposes nothing more than the application of a "needs" or "means" test to the disability compensation and DIC programs. As you are well aware, "outside income" has never been a test for compensation/DIC eligibility since the programs were instituted. I can assure you that to do so now, even in this limited (and unwarranted) degree, the door would be permanently opened for future encroachments. Anytime anyone wished to "save" VA dollars, the solution would be to identify "new categories" of compensation and DIC recipients thought, for one reason or another, not to be in need of financial relief.

Does this Subcommittee really wish to allow our government to relinquish its moral obligation to care for a DIC widow and place such obligation in the hands of a private insurance company, a private airline, or any party found to be negligent in the cause of injury or death?

If a DIC widow with a \$50,000 private insurance death settlement is found to be "too wealthy" to receive benefit payments, then what about a DIC widow who was left with a \$50,000 indebtedness by her deceased husband? Using the logic posed by the pending draft bill, should not this widow receive greater (than normal) DIC payments since her financial need is in direct proportion to the "lack of need" of the widow who receives a \$50,000 settlement. A means test can work both ways, Mr. Chairman.

This is a bad bill, Mr. Chairman, not justifiable and dangerous to program integrity. We urge that you take no action whatsoever on the measure.

* * *

This completes my testimony. I wish to again thank you and the members of the Subcommittee for allowing me the opportunity to participate in today's proceedings.



National Military Wives Association, Inc.

2666 Military Road, Arlington, Virginia 22207

703-841-0462

April 22, 1982

Mr. Chairman and Members of the Committee,

The National Military Wives Association welcomes the opportunity to speak on the Dependency and Indemnity Compensation program (DIC).

Since 1957, the benefits available through the Dependency and Indemnity Compensation program have helped to alleviate the hardships facing the survivors of members of the uniformed services. Today, DIC assists widows from all parts of the military community to meet the basic needs of their families. Equally important, DIC and its related survivor benefits programs provide reassurance to active duty personnel in all stages of their military careers that, in the event of tragedy, their commitment to the military service will be matched by the commitment of the government to their survivors.

Military service is truly more than just a job. It is a way of life for military families. Frequent separations, mobility, interrupted education for children, restricted employment for wives, and hazardous and stressful duty assignments during peace time as well as during war are accepted parts of military family life. All too often, military families pay the ultimate price of the death or disablement from service-connected causes of the service member. The tragic deaths and injuries resulting from a routine training exercise of soldiers of the 82nd Airborne Division earlier this month are only one example: in peacetime as in times of war, the military remains a

hazardous calling.

The unique nature of military service creates unique needs for military families. The mobility of military life restricts employment opportunities for military wives. Moving on an average of every two and one half years, and starting over again and again in entry level positions, they are unlikely to qualify for their own retirement plans or long term benefit programs. Upon the loss of the service member, these family members are less likely than their civilian counterparts to have financial security available from their own employment. Many widows who have never had the opportunity to develop marketable skills are thrown into the labor market for the first time in conditions of family hardship and emergency. A strong DIC program is imperative if the family standard of living of these families is to remain at acceptable levels.

In addition, the average military widow receiving DIC benefits is slightly over sixty years old, according to a Veterans Affairs study done in 1978. Older widows have even greater difficulty surviving financially as inflation eats away at the value of the various fixed-level benefits with which they make ends meet. Income through employment is less likely to be an option for these women. A DIC that adequately reflects the changing economic times and keeps pace with inflation is a necessity.

Service members must be reassured that their dedication to the needs of the service and their sacrifices will be matched by an equal concern for their survivors. Security is an important issue for uniformed personnel and financial protection for family members is a factor in the career decision. In

considering the impact of programs like DIC on retention, it is important to remember that most military personnel are married, and that many studies show that family considerations are a determining factor in the decision of the service member to make a career commitment.

The wives, widows and family members who comprise the National Military Wives Association share the tradition of patriotism and commitment to the military. We are proud to support our spouses as they carry out the military missions of our country. Programs such as DIC must provide adequate protection for widows and surviving dependent children that is consistent with protection available for other federal employees.

The National Military Wives Association is deeply concerned with cuts in educational benefits for surviving family members that have occurred in the Social Security program this past year. Many widows with small children, trusting that those benefits would be there, have depleted their limited family resources on other basic family needs. Now suddenly, the promised support is disappearing and these military survivors are without the financial means to receive a college education. Other service families have seen this break in faith with alarm. We recognize the consistent support that this committee has given to military widows and surviving dependent children and request your consideration of the sad situation in which these families find themselves. Legislation restoring those benefits, or adjusting the amount of educational assistance available from other sources upwards should be a remedy that will insure that education is available for the survivors of military personnel.

The National Military Wives Association continues to request that you consider legislation that would enable military widows to remarry after the age of sixty without forfeiting DIC benefits. Consideration of the effects of loss of DIC force some widows to live lonely lives or accept new life styles which are morally offensive to them.

Finally, the National Military Wives Association supports the 8.1% cost of living increase, as a necessary step to alleviate the financial strains imposed by inflation.

Thank you for the opportunity to comment on Dependency and Indemnity Compensation.

STATEMENT OF
THE VETERANS OF WORLD WAR ONE
OF THE UNITED STATES OF AMERICA, INCORPORATED

BY

DON R. PEARS
NATIONAL LEGISLATIVE DIRECTOR

AND

WINSTON M. ROCHE'
NATIONAL COMMANDER

Mr. Chairman and Members of this distinguished Committee, time and again this Subcommittee has proven itself to be a friend and champion of the Veterans of World War One. However, in view of the strong desire on the part of the Administration to hold down federal spending, the stiff competition that exists for available federal dollars and the "difficulties" that all standing Committees are experiencing with Budget Committee recommendations, we realize that you are working in an atmosphere that makes for difficult decisions. That is to say, total resources made available through the appropriations and budgetary process cannot encompass all of the objectives that this Subcommittee may wish to pursue.

In any consideration of an increase in VA disability and death compensation payments, it is important to recall the principle upon which these programs were established. Disability compensation paid to veterans attempts to represent, to the most practical degree possible, the average impairment in earnings capacity caused by a service-connected disability. DIC benefits on the other hand, are intended to provide a measure of financial security to widows and children in view of the service-related deaths of their husbands and fathers.

In checking the V.A. report March 1982, on service-connected disability compensation, we note that of the estimated total of 421,000 remaining Veterans of World War One, only 23,419 (or less than 6%) are drawing compensation for service-connected disabilities.

Further, of the 23,419 rated as being entitled to compensation, only 3,504 or about 15% are drawing total disability. The point I wish to make is that if being unemployable is a factor in determining compensation, and we think it should be, then age should be a factor

because it is directly related to employability.

It seems that a careful reappraisal of the present rates as they pertain to per cent of disability and employability would be in order, especially as they apply to Veterans of World War One. In grading a veteran who is no longer employable because of age, it becomes academic to find that a veteran with 50% disability was rated employable, while one with a rating of 60% disability could be rated as unemployable and be awarded nearly twice the amount of the first.

To Veterans of World War One, a compensation disability rating of less than 50% often has less value than a pension for those whose incomes are lowest and have the greatest need.

Most volunteers or citizen soldiers, when the War was won, grabbed the Discharge and \$60.00 clothing allowance and proudly called it a deal. There were no V.A. Hospitals, just an informal medical inspection which would show no loss of arms, or legs, and we were civilians! Little did we realize that many had been exposed to mustard gas, which would years later, cause lesions in the lungs ending in T.B. Little did we know that just as we were getting established in business or adapted to our jobs, that the Great Depression would clean the slate and make all begin over once more!

When Social Security became law, we were too near retirement age to earn an adequate retirement benefit and to compound that injustice, inflation reduced the value of our savings to a small part of what we had saved.

You have no doubt heard these facts recited before. But, I am restating them again to support our contention that the small percentage of our service-connected cases be given a break. This can perhaps be done by giving a credit to various age groups, especially as it

applies to those with a disability rating of less than 60%.

As this measure, H.R. 5709 introduced by Representative Montgomery proposes an approximate 9.3% across-the-board increase in basic disability compensation and DIC benefit rates, we urge your immediate consideration of same.

Addressing H.R. 6040, introduced by Representative Sam Hall, to provide eligibility for VA burial benefits for certain veterans whose remains are unclaimed, is a subject that I have been involved with first-hand in Los Angeles, California, in light of the recent controversy when L.A. Supervisor Hahn unearthed the unclaimed bodies of several veterans.

We only have two monetary benefits that ALL veterans have in common. Now they are going to the basics by cutting off one of these two benefits.

Powerful people believe it should be restored. At the present time across the country there are hundreds of veterans' bodies lying in city and county morgues with only a \$150.00 allowance pending from the V.A. towards their decent burial. The city and county administrators have reached an impasse and are at their wits' end as to how to provide a fitting and honorable burial for these worthy veterans.

Senator Alan Cranston from California has introduced legislation to guarantee that no veteran who served honorably in time of war will be buried in a "pauper's grave". Cranston's bill, S.2048, restores VA payments of \$300 for burial of a war veteran whose body goes unclaimed.

Congressman Augustus Hawkins has introduced a similar bill in the House of Representatives, H.R. 5369.

These bills will necessarily go through the normal congressional

processing and will take some time to become law.

There is no FUTURE for us. The time is NOW!!

For the Veterans of World War One I wish to commend the Chairman of this Committee for reviewing the adequacy of the compensation and DIC programs as well as our burial benefit and for the opportunity given us to express our frank opinion upon the need of our veterans.

Although we realize our presentation does not cover adequately the specific bills in question due to our special needs in the Aging Sector, we again thank you for the opportunity to state our overall case before your honorable Committee.

WINSTON M. ROCHE'
NATIONAL COMMANDER
Veterans of World War One
916 Prince Street
Alexandria, VA 22314

Statement of

THE RETIRED OFFICERS ASSOCIATION

Presented By

COMMANDER JOHN F. WANAMAKER
United States Navy, Retired

Deputy Director, Legislative Affairs

Mr. Chairman and members of the Subcommittee:

I am Commander John Wanamaker, United States Navy, Retired, Deputy Director, Legislative Affairs of The Retired Officers Association (TROA) which has its national headquarters at 201 N. Washington Street, Alexandria, Virginia. Our association has a membership of over 310,000 former and active duty officers of the seven Uniformed Services. Included in our membership are approximately 35,000 widows of former members.

We would like to thank this Committee for providing us this opportunity to express our views on legislative proposals to make changes to the compensation programs administered by the Veterans Administration.

This Committee must decide the level of compensation which should be payable to veterans who have suffered impairment of earning power from service-connected disabilities. Last year the congress enacted increases to veterans disability compensation that averaged 11.2 percent. However, this percentage varied with the largest percentage increases being paid to those between 40 and 90 percent disabled. I cannot necessarily fault the wisdom of this congress in making the adjustments in the area which they were made, however, if the original intent of the disability compensation program was to replace the earning capacity lost due to service-connected injuries/illness, then there are basic flaws in the method used to determine the awarding of compensation. Title 38, Section 355 established the schedule of ten grades of disabilities or combination of injuries to be based as far as practicable, upon the average impairment of earning capacity resulting from such injuries in civilian occupations.

We contend, since the payment schedule does reflect in increments of 10 percentages (total disability, 100%) then the payments do not match the reductions in earning capacity. I would defy anyone to be able to justify an 8.1 percentage increase in compensation on the basis that it reflects that additional amount of reduction in earning capacity.

Our association has on previous occasions pointed out that the current system does not properly compensate an individual for loss of earning capacity for service-connected injuries. As an example, a nuclear engineer, commanding officer, compared to a high school drop-out recruit may sustain identical injuries. Obviously the amount of compensation based on average impairment of earning capacity does not properly compensate either of these two individuals.

We would recommend that for Fiscal Year 1983 a percentage increase be made to the disability compensation which reflects the actual cost of living increase since the last adjustment. This would prevent service-connected disabled veterans from experiencing a reduction in their standard of living. We would urge the congress to review the complete disability compensation system and require the Veterans Administration to study methods to improve the compensation system. I would hope that such a study would consider the government obligation to provide compensation or employment opportunities to attain income comparable to that received by their peers in the civilian sector. A proper system should be established to encourage an individual by incentives to achieve comparability and then the government should provide the shortfall between actual earnings and comparability. Hopefully, such a program would encourage disabled veterans to be assimilated into the mainstream of our society. I believe a revision of the Veterans Administration disability compensation system needs drastic revision and new initiatives considered in this area.

Section 104 of H.R.5709 would increase the benefits payable to survivors/dependents under the Dependency and Indemnity Compensation (DIC) program. The proposal would provide an increase of 8.1 percent across the board to all beneficiaries effective, on 1 October 1982. I would like to point out that the proposed table of benefits for the surviving single spouse of an officer (a major 05) with 18 years of service) is \$731 per month or less than 20% of that officers' regular military compensation prior to his death. Mr. Chairman this is totally inadequate. The surviving spouse of this officer would be in real economic trouble. In drawing a comparison

the widow of a Federal civilian employee whose death was job related earning a comparable income, would receive \$1929.33 per month. The replacement income for the civilian employee's widow would be \$1198 per month greater than under the proposal for the DIC increases in H.R.5709.

I have chosen an extreme example but the disparity crosses the whole spectrum and almost all ranks/grades. We recommend that the 8.1 percent increase or the experienced percentage be authorized to be paid this 1 Oct. 1982, but also require that before 1 Jan. 1983 the Veterans Administration provide this committee with recommendations as necessary to provide the military survivors with an equivalent beneficial DIC program. This committee should be aware that certain benefits available to the surviving spouses and dependent children under Social Security were reduced/eliminated as a result of the Budget Reconciliation Act of 1981 and thereby created a larger gap in the years when Social Security benefits were payable. The DIC program might be restructured to fill this expanded void caused by the Social Security benefit changes. We further recommend that widows in receipt of DIC should be authorized to continue to receive these benefits should they remarry after age 60, similar to other federal programs.

The Title II Compensation amendments of the bill (H.R.5709) would limit service-connected disability compensation where a rating of total disability because of unemployability has been assigned for months after Sept. 30, 1983, should the veteran be in receipt of benefits under Social Security or any other Federal program providing monetary benefits for disability or retirement.

Mr. Chairman, I envision difficulty in administering this provision of the bill. Under current law military retired pay is already reduced by an amount an individual receives in V.A. disability compensation. If this were enacted and an individual were also in receipt of Social Security benefits would the veteran have the offset against his retired pay restored by the amount attributed to Social Security? If this veteran were to experience a dollar for

dollar offset why then should he apply for Social Security benefit early when by the delay it would increase the spouse's Social Security benefit. Which offset would take precedence, military retired pay or V.A. compensation, since each would be offset against the other. Would withdrawals from an IRA account also be offset? How about the tax deferral on IRA's as this too is a Federal program providing monetary benefits for retirement? If the veteran's wife worked in Federal employment and provided an annuity to the veteran through the Civil Service Survivorship Annuity program before she died would these benefits also be used to offset the V.A. Compensation? The same question would apply if the veteran's spouse were a military retiree? Would a Social Security benefit then offset both the V.A. Compensation and the Military Survivor Benefit Plan? Or, would the "community property" awarded by a state that divided the veteran's ex-spouse Civil Service retirement in a divorce settlement be considered a Federal retirement program to offset the 100 percent unemployability disability compensation? P.L. 95-479 guarantees DIC to widows of veterans who have held a totally disabling VA service-connected rating for 10 or more continuous years before death. A 100 percent unemployability rating has been determined to meet the totally disabling requirements of P.L.95-479. If a veteran is also a federal civil service retiree whose disability compensation would, for example, be kept at the amount of the schedular rating, would he still continue to hold a totally disabling rating for DIC purposes under P.L. 95-479 even though the unemployability portion is reduced?

Although I do not agree with the requirement that a military retiree must have his retired pay which is based on years of service reduced if he is in receipt of VA disability compensation, the proposal to reduce the unemployable portion of the rating when in receipt of Social Security benefits is going much too far. I'm talking in particular about the veteran who not only has earned military Social Security wage credits but also credits earned in civilian covered employment. When benefits are earned independently, one should not reduce the other. In any case, the Social Security offset should

never exceed the amount of the Social Security benefit attributable to military service.

Mr. Chairman, there are so many different possibilities of conflict associated with this proposal that I urge you to delete the provision of Title II of this bill unless all these questions can be answered satisfactorily.

Any Social Security offset should not exceed 50% as the veteran paid one half the FICA tax in order to receive this retirement/disability benefit.

Also the provision of H.R.5907 eliminating the additional compensation for dependents of those veterans rated 30 and 40 percent disabled appears to have more of a budgetary consideration than relief for the dependents of disabled veterans. If in its wisdom the committee believes that this benefit is not appropriate then I recommend that it terminate any additional new beneficiaries after the date of enactment. In other words, phase out the benefit in order that those now receiving the benefit will not suffer a reduction in their standard of living. An alternative would be to freeze the amount at current dollar levels for those dependents of 30 and 40 percent disabled, and curtail new beneficiaries as already suggested. This would eventually eliminate this benefit completely for those in this 30-40 percent disabled category.

In summary, I recommend that H.R.5709 be favorably considered with the increases adjusted to reflect the actual increase, in the cost of living since the last adjustment. We recommend that both the compensation and DIC schedules be studied and a report required early in the 98th Congress to insure that the replacement income due to death/injuries or illnesses be correctly and properly compensated. I can assure you there are gross inequities in the programs now and, hopefully, this mandated study should bring these to the committee's attention. The study should also address the propriety of the waiver of military retired pay for years of service in order to receive VA disability compensation, two completely different systems. Under

the current laws DIC payments are terminated when a widow remarries after age 60, contrary to other federal programs such as Social Security which authorizes continuation of the benefit if they remarry after age 60. We believe this comprehensive study of the compensation programs is urgently needed. We further recommend that a portion of Title II of the bill be deleted or modified to insure that suffering will not result as a consequence of the changes. Also, in phasing out dependent educational assistance it should be understood that those deceased veterans' who believed this benefit would be available to educate their children, and many planned their estates accordingly, if they were still alive would consider this a breach of implied contract and trust. It's easy to say that other government programs are available but for many this is not true.

I would like to comment briefly on various other bills under consideration by this committee such as H.R.5144. We would support this measure as it would provide compensation for those who may die or become disabled through disease or injury while participating in service training camps or cruises as a Senior Reserve Officer Training Corps member.

H.R.4308 - Amyotrophic Lateral Schrosis (ALS) is a most heinous disease. From the limited knowledge available there are different strains of the disease, sporadic and familial. The familial strain is hereditary and would normally not be a result of military service. Nor has the medical profession been able to determine that military service or environmental situations have any effect whatever on the onset of this disease. There are no means that I can determine that the sporadic strain has any relationship to past environmental stress or other factors either. Rather than make this disease a presumptive result of prior service we recommend that an amount of not less than 10 million dollars be authorized the Veterans Administration for Fiscal Year 1983 to study the cause and hopefully develop a cure for this disease. Even though I have the most sincere sorrow for the families of the victims of this disease, I believe that finding the

cause and cure would better serve the interests of veterans who may fall victim of this disease. If the study should show that environmental factors or stress of military service are contributing factors, then and only then, should the disease be included in those illnesses for which veteran's compensation be paid. Again our recommendation would be to fund a research study on the cause and cure of this disease.

H.R. 6040 - It has been reported that there were a considerable number of veteran's remains that were unburied because of lack of funds for this purpose by certain states and municipalities. Our organization supports this measure with the reservation that the payments only be made if the funeral or burial be made in grounds designated for veterans and appropriately maintained. We would object if these funds were used to allow a veterans' burial in a "potters" field.

H.R. 6041 - This measure broadens the eligibility for persons to receive the flag that draped the coffin of those deceased who are buried in Arlington National Cemetery. The Retired Officers Association strongly supports this proposal.

Mr. Chairman, the committee announcement letter of these hearings indicated that consideration may be given to an unnumbered bill to require offsetting from VA benefits the amount received from another financial settlement for the same injury or death. Although, it would appear that proposal would only change the current statute from Chapter 12 to Chapter 51 Title 38 USC and substituting the word "individual" vice "surviving spouses or a child" there exists what we believe a problem in this basic statute. Under Section 2651 of Title 42 USC the United States has recovery rights from third parties for costs of care for injuries or disease furnished by the government. Although, care by the Veterans Administration is exempt, other agencies such as the Department of Defense in the case of military medical care or Department of Human Resources in others, there exists the possibility of an offset against benefits under this proposal which the beneficiary may never receive. We believe this should be thoroughly

explored by the committee before taking final action. We do not believe the government should recover twice. We believe it only prudent, if favorably considered that language be included to authorize the Administrator to waive this offset in whole or in part when he determines that such an offset would result in undue hardship.

Consideration also should be given to exempt the legal costs and fees the beneficiary may expend to achieve a judgement or settlement, as you realize I'm sure such lawsuits are frequently expensive.

Thank you, Mr. Chairman I will try and answer any questions that the committee members may have.

**THE NON-COMMISSIONED OFFICERS ASSOCIATION
OF THE UNITED STATES OF AMERICA**

"STRENGTH IN UNITY"



STATEMENT OF

RICHARD W. JOHNSON, JR.
NATIONAL LEGISLATIVE DIRECTOR

before the

SUBCOMMITTEE on COMPENSATION, PENSION, and INSURANCE
COMMITTEE on VETERANS AFFAIRS

ON

COMPENSATION and SURVIVORS BENEFITS AMENDMENTS

APRIL 19, 1982



The Non Commissioned Officers Association of the USA (NCOA) is grateful for this opportunity to present its views on improvements and modifications to compensation programs for veterans and their survivors. More than 250,000 non-commissioned and petty officers belong to NCOA. Eighty-three percent of them are on active duty in our nation's armed forces. The remainder are members of the reserve forces, have retired or are simply veterans. Whatever their status, they share a common interest in the benefits of service--the important benefits which the committee has gathered to discuss today.

Because of the number of bills under consideration by the committee, and the diversity of topics covered in the proposals, the Association will define its positions on H.R. 5709 on a section by section basis rather than in order of relative importance. We will address the other bills separately. There is also an area of oversight regarding Dependency and Indemnity Compensation (DIC) upon which the Association must comment. We will begin with these remarks.

DIC payments are made on a graduated scale based on the rank the deceased veteran held at time of death or discharge from the armed forces. There are no considerations given to the degree or type of disability which led to the veterans death. There is no consideration given to how the disability was incurred or to the length of time it existed. Hence, two survivors of veterans with similarly disabling conditions will receive different rates of compensation. The widow of an enlisted man killed in Vietnam will receive less in compensation than the widow of an officer killed in an automobile accident on our Nation's highways. Worse yet, the widow of a senior noncommissioned officer who had given 18 years in the service before his death will receive less than the surviving spouse of a lieutenant who served only two years. These are but a few of the inequitable disparities that exist in the system. Regretably it is easier to identify the disparities than to find a remedy.

Since 1974 when NCOA first pointed out this problem in Testimony before the committee, there have been a number of suggestions advanced. One study mandated by Congress with the passage of Public Law 94-433 took more than a year to conduct. It determined that widows of junior officers were generally better educated than enlisted men's wives in their age group. It found that they had fewer children and larger personal earnings. The study found that the surviving spouses of senior officers generally had the largest incomes from other sources. Generally speaking, the study found that the largest DIC payments were being made to survivors in a relationship that is inverted to need. Yet the study concluded that the current system should be retained--not because it was the best--because it was the least objectionable.

Still, many organizations believe there is a better method of payments available. One of the most popular is to reduce the number of pay brackets from 28 to four. We could probably support that if the groups went E-1 to E-5, O-1 to O-3, E-6 to E-9, O-4 to O-10. This structure would recognize the years of service of the senior enlisted member but in reality it still would perpetuate many of the current problems.

Another suggestion has been to pay the surviving spouse a percentage of the disability compensation the veteran was receiving. This idea would probably be fine for the survivor of a veteran who was rated at 60 percent or more. But, it does little to compensate the survivor of a veteran who had a ten percent rating for hypertension and died from a stroke. Neither will it work for the servicemember who dies on active duty.

In the final analysis, the most appropriate form of DIC is probably a single payment to all survivors or a floored payment based on the survivor's income.

It is our hope that the committee will reexamine the structure of the DIC program. Perhaps, the best method to determine the adequacy of the program is to mandate a new study of the issue. In any event, NCOA urges the committee to act to bring equity to the program.

H. R. 5709

Of the several bills under consideration today, H.R. 5709 the "Veterans Disability Compensation and Survivors' Amendments of 1982" is the most important. It is a comprehensive bill containing proposals to change public law in concert with the budget recommendations of the President.

Title I of the bill seeks to provide an 8.1 percent cost-of-living (COL) increase in veterans disability compensation, rates of additional compensation for dependents, veterans clothing allowances, rates of DIC for surviving spouses and children, and rates of supplemental DIC for children. Notwithstanding our previous comments on DIC benefits, NCOA supports the proposed increase. In our opinion an 8.1 percent increase is sufficient to offset the erosion of purchasing power caused by inflation and perhaps, provide a small real benefit increase.

Title II of the bill suggests cuts in unemployment supplements and payments of additional compensation to certain veterans with dependents. Both proposals will affect veterans with service connected disabilities. NCOA strongly opposes both changes contained within this title.

Under current law the Administrator of veterans affairs may provide additional compensation to veterans whose service connected disability interferes with the ability to obtain or hold gainful employment. Just over 100,000 veterans receive the additional benefits. Under the provisions of the bill, the administration is seeking to reduce the amount

of additional compensation payable by the amount of social security payments received by individual veterans. The logic employed to justify the cut is that such payments constitute a duplication of benefits. NCOA disagrees.

An unemployable veteran does not have the ability to provide a maintenance income for himself or his family. Neither does he have the opportunity to build equity in a retirement program through longevity with an employer. He also misses the other benefits of regular employment. We view the unemployability benefits paid by the VA as an assumption of employer obligation. Social security benefits, on the other hand, are a social insurance program. They exist to provide a maintenance income. However, the Social Security Administration does not adjust their payments on the basis of employer compensation to the disabled individual. Therefore cutting the veteran's benefits places him in a decidedly inequitable situation. NCOA concedes the existence of individual problems in this area but we believe universally applicable amendments to social security laws will provide a more equitable remedy.

The second part of Title II suggests increasing from 30 percent to 50 percent the degree of disability from which a veteran must suffer to be eligible for additional compensation for dependents. Prior to 1978 only veterans with disabilities rated at 50 percent or more were eligible for such additional compensation. At that time Congress looked behind the issue of whether a veteran was employed full time to consider the quality of employment and other factors surrounding income potential. The reduction in eligibility ratings reflected a thoughtful reconsideration of income sacrifices made by veterans. NCOA opposes the repeal of this action.

Title III of H.R. 5709 proposes four changes in law. First among them is a measure to delay the payment of compensation and pension awards to the first day of the month following the month in which the award becomes effective. Under current law payments are prorated over the days of the month. Under the proposal a veteran with a service connected disability could lose 29 days of compensation if the effective date of his award was the second day of the month. It is not within the power of the VA to remove the veteran's disability for those days, therefore the veteran should be compensated. Accordingly, NCOA opposes the provisions regarding disability compensation claims.

Pension payments are another matter. They innure as a result of both service and need. NCOA believes cuts in this program are misguided and we oppose them on that basis.

The second portion of Title III seeks to change the effective date of a reduction in compensation, pension or DIC based on the loss of a dependent. Under current law amounts of compensation, pension or DIC payable on account of a dependent continue to the end of the year in which a dependent was lost. Thus dependency allowances would continue through December of any year even though the dependent was not present in the veteran's household since January. The proposed change would make the compensation reduction effective on the last day of the month in which a change in status occurred. NCOA does not object to the change. However, we are concerned about the VA's ability to accommodate such changes so rapidly. In our opinion the proposed change will prompt substantial overpayments and cause considerable inconvenience to both the veteran and the VA. Accordingly, we believe the VA should

assume some of the financial burden this will place on the veteran. For example, why not make the reduction effective with the VA's first payment after the change is recorded provided that the veteran notified the VA of such change within 45 days.

The third change recommended in this portion of the bill is the rounding down of compensation and pension payments to the next lowest dollar. NCOA objects to any reduction in current benefits.

The fourth and final substantive proposal in this section suggests placing limitations on dependency supplements to non-service connected pensions for children attending college. Such a restriction would considerably increase the burden of providing for a dependent child's education. NCOA objects to the change.

Title IV of the bill proscribes effective dates for the various provisions of H. R. 5709. Except as previously noted, NCOA has no objection to these dates.

In addition to H.R. 5709, NCOA was invited to comment on five other proposals. Our comments follow.

H.R. 5308

The bill seeks to provide a seven year period of presumed service connection for amyotrophic lateral sclerosis and progressive muscular atrophy if a disability of 10 percent or more is manifested in that period. NCOA does not object to the bill.

H.R. 5144

The bill seeks to make members of the senior reserve officers training corps eligible for VA benefits if they sustain injury during military training summer camps. The proposal is consistent with the governments' obligation to provide for its service members.

H.R. 6039

The measure provides a technical change in law to which the association has no objection.

H.R. 6040

The bill, if adopted, will provide burial benefits for veterans whose remains are unclaimed. The measure is a reaction to a problem which was created last year when broad cuts were made in the veterans burial benefits program. As a result of the cuts war veterans whose remains were unclaimed and those whose estate was not sufficient to pay funeral costs were consigned to pauper graves or cremation. Passage of this legislation will allow the VA to pay for a proper funeral. NCOA supports the bill.

H.R. 6041

If passed, H.R. 6041 will allow the Administrator of Veterans Affairs to provide a flag to drape the casket of all persons who are buried in Arlington National Cemetery or other national cemeteries administered by the VA. The new authority would allow the distribution of flags to people who are not currently eligible. The association believes current law regarding the Administrator's authority to provide burial flags is sufficient. Perhaps at such time as it is possible to recind restrictions on burial benefits and to repeal some other cuts made in veterans benefits NCOA will be inclined to support such a proposal.

Finally, one unnumbered proposal was included in our invitation to appear. If introduced and adopted it will provide for the suspension of disability compensation and pension payments to any veteran or survivor who has received another financial settlement for the same injury or death. Such suspension would continue until the amount of suspended payments equal the amount of the financial settlement. The bill is an expansion on current law which allows a similar offset of DIC payments when another settlement is received by the survivor.

NCOA is disturbed by the ambiguity of the proposal. For example, will it relieve the VA of liability to pay disability compensation to a veteran if such veteran receives a malpractice settlement from a physician treating his injury or illness? Will it allow the VA to avoid disability payments if a veteran's service connected disability is aggravated in an accident which results in a separate settlement? In our opinion the bill as it is written will allow the VA to hide behind the law from liabilities that are apart from routine. Accordingly, we believe its objectives should be more clearly defined.

TESTIMONY OF MADELINE VAN WAGENEN, SURVIVORS OF SACRIFICE

MADELINE VAN WAGENEN

SURVIVORS OF SACRIFICE

Gentlemen, thank you for allowing me the privilege of providing testimony here today. The members of this committee are to be commended for their continued concern for the individuals affected by this committee's decisions. I realize that over the years the work of this committee has benefited a great number of people.

I understand this hearing has been called for the purpose of discussing adequate compensation for the survivors of members of the Armed Forces. I speak to you today on behalf of a nation-wide network of military widows who are working together to fight an immediate crisis. This crisis is the recent elimination of the social security educational benefits for our children which become effective in a matter of days, and the reduction of widows benefits.

The purpose of discussing this recent turn of events here is that in determining what adequate compensation is, this committee considers all benefits available. Past compensation decisions have been based on what aid is available, the level of disability and what appears to be generally fair.

Social security benefits make up a significant part of the total package of benefits provided for the survivors of the military. And their interests fall under the traditional purview of this committee. The cuts in social security benefits that affect this group are:

- * the elimination of the widow's payment when her youngest child reaches his sixteenth birthday, rather than his eighteenth birthday, as has been the case since 1940, and
- * the elimination of social security payments to students enrolled in a full-time post-secondary program-- a loss, in most cases, of four years of payments.

Although we are not here to discuss the wisdom of that cut, I would like to bring to the attention of the committee the impact this cut has on the widows and orphans of men killed in the Armed Services. I would also urge you to consider the importance of maintaining commitments made to the men who served and died for this country.

Active duty military personnel are regularly instructed in their benefits. During this instruction they learn that in addition to the VA benefits provided, they have the protection of social security benefits. Often times, widows and orphans receiving these benefits have as their largest source of income their social security checks. Now we are facing the immediate crisis that some of those checks, and in one case, an entire benefit program, have been eliminated by an act of Congress. Orphans enrolling in college anytime after May 1st, a mere eight days from now, will not be eligible for their anticipated educational payments. And non-working mothers whose youngest child reaches his sixteenth birthday will lose up to two years of her benefits. In some families, both situations are occurring nearly simultaneously.

There is in the House a bill which recognizes the special relationship between the military and the government as its employer. HR 5600 attempts to remedy the situation by continuing the commitment made to the military by providing for the protection of children who qualified by September 1, 1981 for the now deleted benefits. We strongly support this bill whose purpose is to maintain those commitments extended to this country's military by "grandfathering" these children through. We recognize that due to this change in the law, the committee may want to consider other benefits for current and future military members. However, the least the committee could do is to ensure that the programs already promised are continued for those men who are no longer alive to accept or reject such a major change in their benefits package.

We are able to support this bill because of our careful re-examination of the Department of Defense documents given to our husbands while on active duty. As you know, trained military advisors instruct active duty members about their benefits and encourage them to so inform their wives. Careful estate planning can thus be accomplished and financial protection of survivors can then be ensured.

I would like to present for the record an excerpt of one such example of a DoD document, delineating the benefits program (see attachment). On page 23, clear and unambiguous language details the social security benefits available, and state that social security

will provide monthly income to your unmarried children under age 18 (or until 22 if they are full-time students)... and to your widow if she is caring for a child or children under 18 or disabled.

Additionally, it goes on to say

Any social security benefits paid your survivors are separate from, and in addition to, any form of compensation or other benefits paid by the Veterans Administration...

It appears that such emphasis was placed on the benefits provided for the purposes of recruitment and retention. Furthermore, we believe that such emphasis was placed on benefits because of the limitations military members faced in obtaining private insurance; in negotiating a benefits package, as a union might; and in the knowledge that unlike civilians, survivors can not sue the government for the death of their husbands or fathers, as civilians can in the case of a job related death or disability.

But why, you might ask, does HR 5600 place the responsibility of replacing these benefits on the Veterans Administration. Clearly, the traditional mission of the Veterans Administration has been to protect the interest of the veteran and his survivors. As the VA motto states, the Veterans Administration's purpose is "To care for him who shall have borne the battle, and his widow, and his orphan." Since the social

security benefits are a major part of the package of benefits provided to the military, the Veterans Affairs Committee can not afford to overlook the effect the social security cut has on the "survivors of sacrifice." It seems to us that if the VA committee is truly concerned with maintaining the commitments made to the men and with providing adequate compensation for their survivors, then they will be greatly concerned with this drastic loss.

Let me point out that in 1957 when the Federal Government put the military under the social security system it recognized a special obligation to the young service man. By law, the Veterans Administration already makes a special payment in place of social security benefits. Consider the case of a young man, drafted to fight his country's wars, who dies before he has worked the required 1½ year minimum under social security covered employment. He does not qualify for social security survivors benefits. The country recognizes a special obligation to that young service man, and therefore, to his family. As stated on page 23

VA will pay a special allowance to a widow with children whose husband was not fully and currently insured by social security. Payments vary and are paid according to certification by social security.

However, in every case now when a military member dies in the defense of this country, he has no vested rights in his benefits package. Unlike a civilian worker in a private pension plan protected by the Pension Reform Act of 1974 who can seek appropriate remedies and redress, the members of the military have no such protection of their benefits. You would think that the giving of one's life for his country would vest a service man's benefits.

I thank you for this opportunity to speak to the issues of adequate compensation. I hope that my remarks will lead you to believe, as I do, that the Federal commitment must be upheld to the military dead. The sacrifice they made is irreversible, and so, therefore, must be the Federal commitment to them.

Excerpt

your personal affairs

DoD PA-6A
DA Pam 360-524
NAVPER 15900C
AFF 211-2
NAVMC 1148 (Rev. 68)



ARMED FORCES INFORMATION SERVICE
DEPARTMENT OF DEFENSE

INTRODUCTION

Keeping family affairs in order at all times is important to your own welfare now and in the future. For Armed Forces members who have family responsibilities it is also important to the welfare of others now and later.

This pamphlet is a guide to legislation and Service procedures that affect your personal affairs. It also contains a convenient form to be used in recording information about military service, family assets, and survivor protection in an organized manner.

The pamphlet can be helpful to a person before reporting for active duty and directly after entering service. It is also designed to summarize for the career Armed Forces member current legislation and Service provisions that affect personal affairs and to emphasize to careerists the importance of taking steps required to assure that affairs are in order.

This pamphlet is intended primarily for personnel on or entering on extended active duty in the Armed Forces. However, except as otherwise indicated, it is generally applicable to members of the Reserve components on or ordered to active duty for training for 31 days or more. If you are a Reservist in this category, your questions can be answered by your legal assistance officer, unit personnel officer, or the custodian of your personnel records at the installation where you will be on active duty for training.

No man deliberately sets out to put his family behind the "eight ball." Too many individuals do just that because they are careless and unthinking. Without meaning to, they leave their families completely in the dark about their rights and benefits as survivors of a serviceman or a veteran. Your dependents may suffer needless anxiety and hardship tomorrow because you didn't act today.

Do members of your family—your wife, children, or parents—know they may be entitled to one or more of the following benefits when you die, whether on active duty, in retirement, or as a veteran?

- Six months' pay death gratuity.
- Life insurance.
- Dependency and Indemnity Compensation.
- VA pension.
- Social security payments.
- Burial expense payments.



- Medical care.
- Final transportation of household effects.
- Orphan education assistance.
- Business, farm, or home loans for widows.

You owe it to your wife, your children, or your parents to put your affairs in order today, so they will know what to do and what to expect, if it becomes necessary tomorrow.

You should at the very least:

- Prepare a will, or, if you have an old one, update it.
- Select an executor to be named in your will to carry out the terms of the will.
- Make certain that your Record of Emergency Data, maintained by your Service, is current at all times.
- Maintain a permanent file of all records and documents pertaining to your military service.
- Prepare a Personal Affairs Record and keep it up to date (see pages 17-20).
- Keep these important documents in a safe place, and tell your next of kin—wife, child, or parent—where they are.
- Let your family know what you are doing for their future protection.
- Inform your family of the Government benefits they will be entitled to if you die and where to file claims.

The purpose of this pamphlet is to help you put your personal affairs in order and plan now protection for the future of your family.

YOUR SOCIAL SECURITY



Contributory Coverage Now. Since January 1, 1957, members of the Armed Forces have been under social security on a "contributing basis"—paying the same social security taxes and being eligible for the same benefits as people in civilian employment.

The Government, as your employer, matches the amount of social security tax withheld from your basic pay, and the total goes into the social security trust fund. Your earnings are credited to your social security account.

Benefits. Benefits include unreduced social security payments for you and your eligible dependents when you retire at 65 or later. There is provision for permanently reduced social security payments if you elect to retire at 62. And disability benefits are payable if you are disabled before age 65. These payments can start the 7th month after the beginning of your disability. Anyone reaching the age of 65 is eligible for hospital insurance under the social security medicare program and can also sign up for voluntary medical insurance.

Your social security coverage is figured in "quarters," which are credits for each 3-month period in which you are paid \$50 or more. For social security benefits, a man born in 1926 or later or a woman born in 1929 or later needs credit for 40 quarters, that is, 10 years' work (military service or

civilian employment). But if you were born earlier you need fewer credits.

To provide protection for families of younger members of the Armed Forces, the Social Security Administration makes monthly survivor benefits payable to eligible dependents (children and widow, if she is caring for children) of members who have 5 quarters' (18 months) coverage in the 3 years preceding death.

Free Wage Credits. Members of the Armed Forces did not pay social security taxes on their Service pay before January 1, 1957, but free wage credits of \$160 per month are granted by the Social Security Administration, except under certain circumstances, for all military service between September 16, 1940, and December 31, 1956. Time spent on active duty during that period cannot generally be used for both military retirement and social security purposes.

However, any active duty since January 1, 1951, can be counted toward both military retirement and social security benefits by anyone who has been on active duty at any time since January 1, 1957.

If none of your service is used to establish eligibility for retirement and you do not receive retired pay based on length of service, you can claim the free military wage credits for all months served on active duty between September 16,

1940, and December 31, 1956. Incidentally, receiving Veterans Administration payments is no bar to using the free wage credits for social security benefits.

You do not get free credits automatically. They are computed when you or your survivors file a claim and submit evidence of your military service.

Military Service and/or Civilian Work. When you leave the Armed Forces you may not have acquired all the credits you need for social security coverage. If not, you must work in "covered" civilian employment at least long enough to earn the additional credits.

The amount of the payments you will receive is figured on a basis of your average earnings, and the amount will be generally lower if there is a gap in your worktime.

One Number. The Social Security Administration keeps a lifetime record of your earnings under your name and social security number. Your name may be the same as

another person's (or it may be legally changed), but your social security number belongs to you, and you alone, and remains the same throughout your life. It is, therefore, highly important that you always report your number accurately.

Check Your Record. It is a good idea to check your record with the Social Security Administration from time to time. Get a special postcard form from the Social Security office nearest you and request a statement of the earnings credited to your account. Remember that free credits (for the 1940-56 period) will not show up on such a statement, since the decision as to whether you are eligible for them will not be made until a claim has been filed for benefits.

Local Offices. Your local social security office will answer specific questions you may have about benefits and eligibility requirements.

SURVIVORS' BENEFITS

Six-Months' Pay Death Gratuity. If you should die while on active duty, or from service-connected causes within 120 days after separation, your spouse or other eligible survivor may be entitled to a lump-sum death gratuity of six times your total monthly basic pay (plus special, incentive, and proficiency pay but not allowances for subsistence, quarters, and clothing) at the rate to which you were entitled on the date of your death. The minimum payment is \$800; the maximum, \$3,000. The payment of the sum is made as soon as possible by your Service.

Dependency and Indemnity Compensation. If you should die of a service-connected cause, either while on active duty or after separation or retirement, the Veterans Administration will, upon application, pay to certain survivors monthly benefits known as Dependency and Indemnity Compensation. The monthly amount usually is computed on the basic pay being received by a Uniformed Services member on active duty in the same rank and with the same length of service as the deceased at death, in the case of a person who dies on active duty, or as the deceased at his last separation from active duty, in the case of a separated or retired person. Computation can be based on a higher rank if such rank had been held satisfactorily by the deceased for 6 months or longer. In all cases of DIC eligibility, qualifying

service must be under conditions other than dishonorable. DIC can be paid to—

- **Your Unmarried Widow.** The amount would be \$120 plus 12 percent of the applicable basic pay described above.

- **Your Unmarried Children Under 18.** If there is no entitled widow, payments for children under 18 (under 23, if attending school) can also be made.

- **Your Unmarried Children Over 18.** For a helpless child (one who became permanently incapable of self-support before age 18), monthly payments can be paid even though a widow receives payments.

A child over 18 but under 23 who is attending school but not receiving orphan's education assistance may receive a monthly payment even though a widow also is entitled to payment. If there is no entitled widow, the child would be entitled to the same amount as an unmarried child under 18.

- **Your Dependent Parents.** Surviving dependent parents (within certain income limitations) can receive monthly benefits on a sliding scale according to other income and marital status. Compensation for dependent parents is in addition to any payments to surviving widow or children.

The indemnity compensation rates are the same for both wartime and peacetime service-connected deaths, and, except

in the case of dependent parents, are payable without regard to other income.

If you should die with an inservice waiver-of-premium on Government life insurance in effect, your eligible survivors will not be entitled to the dependency and indemnity compensation rates, but will be entitled to the old form of death compensation which, in most cases, is lower.

Special VA Allowance. VA will pay a special allowance to a widow with children whose husband was not fully and currently insured by social security. Payments vary and are paid according to certification by social security.

Social Security. If you have the necessary coverage at death (which may be less coverage than you would need for your social security retirement benefits), social security will provide a monthly income to your unmarried children under age 18 (or until 22 if they are full-time students), and to your disabled children over 18 if they became disabled before reaching 18, and to your widow if she is caring for a child or children under 18 or disabled. It also may provide an income to your widow as early as age 60 and to your dependent parents at age 62.

The amount of benefits that would be paid your dependents after your death depends upon your average earnings under the social security program. You should inform members of your family that they must apply for these benefits, since payment is not automatic.

Another social security benefit that may be received is a lump-sum death payment of as much as \$255. This is paid to your surviving widow (or widower), or, if there is no qualified widow (or widower), the person or persons paying your burial expenses. The person entitled to the lump-sum payment has until 2 years from date of death to file a claim. Application may be made to the nearest social security office.

Any social security benefits paid your survivors are separate from, and in addition to, any form of compensation or other benefits paid by the Veterans Administration, (including the payment toward burial expenses).

Retired Serviceman's Family Protection Plan. You can provide your widow and/or children with monthly income after your death in retirement by electing to pay for a survivorship annuity from your military retired pay. This voluntary plan is made possible under the Retired Serviceman's Family Protection Plan.

You can provide an income of one-eighth, one-fourth, or one-half of your military retired pay, reduced by the cost of the survivorship annuity, for your widow and/or children through this program. You must choose the plan you want either before you complete 18 years of service for pay purposes, or at least 3 years before the first day for which you

will be entitled to receive retired pay. You can decide to participate in the plan at any point during your military service. Doing so could result in an additional income for your survivors if you die after your retirement begins, or if you should be prematurely retired on disability before death. In addition, it provides an annuity payable if your death is from a service-connected cause, in which case your survivors would not be eligible for DIC payments.

Costs vary, depending on your age at retirement, your beneficiaries' ages, the option or option combination you choose, and percentage of coverage desired. For information about your particular case, consult your personnel or insurance officer. The Department of Defense Pamphlet FA-7A, *Retired Serviceman's Family Protection Plan*, gives details about the plan and examples of typical costs and annuities.

Pensions for Widows and Children when Death Is Not Service Connected. Just as you might be eligible for a Veterans Administration pension if you become permanently and totally disabled and have income and other financial assets within certain limits, so may your eligible survivors receive this pension if you die from a cause not service connected and their income and other assets are within specified limits. Your credit for wartime service (since 1917) is necessary for their eligibility. When they visit the nearest VA office following your death, their eligibility for this pension can be determined. Periodically the law is changed to ease income and asset limitations, so that the widows and dependent children of more and more former Service members find they can get this pension.

Medical Care. If you die while in service or after you retire, your eligible survivors will continue to receive medical care under the Uniformed Services Health Benefits Program discussed on page 12. It would be helpful for you to keep with your Personal Affairs Record the latest DoD pamphlet on the health benefits program.

Burial. Usually, when an active duty member dies, the Service to which the deceased belonged immediately takes charge. If the serviceman dies at home, on leave, or otherwise away from military control, the nearest survivor should first notify the commanding officer at the deceased's duty station, then get in touch with the nearest military headquarters for assistance. If no military authority is available, a reputable undertaker should be put in charge of the remains until military authorities arrive. The Red Cross or a local veteran's organization may be called upon for help.

You should tell your dependents about these necessary steps so that they will be prepared for this emergency. Because most of us don't like to discuss death, you may prefer to write detailed instruction in the memorandum section of

Pre-Release Training

If you have from 1 to 6 months' service time remaining and wish in-service training or education to increase your opportunities for civilian employment before your release from active duty, see your local educational advisor or personnel officer about Project TRANSITION.

DON'T DELAY—ACT TODAY!

You—and you alone—are the one who can put your personal affairs in order. Of course, you EXPECT to be around for a long time, BUT...

Don't gamble with trouble for your loved ones!

Consider them by preparing your—

- Necessary legal documents.
- Personal Affairs Record.
- Military history file.
- Record of Emergency Data: DA 41, NAVPERS 601-2, AF 246, NAVMC 10526-PD, or CG 4133.

One final thought: Do these things TODAY!

NATIONAL ASSOCIATION of MILITARY WIDOWS

4023 — 25th ROAD NORTH
ARLINGTON, VIRGINIA 22207

TELEPHONE: 703 — 527-4565

STATEMENT OF JEAN ARTHURS
LEGISLATIVE DIRECTOR
OF THE
NATIONAL ASSOCIATION OF MILITARY WIDOWS
BEFORE THE
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
COMMITTEE ON VETERANS AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

April 22, 1982

The Secretary of the Army stated, "When the government contracts for the serviceman, it really contracts for the entire family unit as it includes all of the family in the adjusted lifestyle, the 24-hour call, the 'perils and discomforts' with readiness to serve anywhere, to go to hazardous places at a moment's notice." The service wife is expected to be ready to follow her husband to any assignment, or to remain behind cheerfully, and to always be an ambassador for the United States. These women have proven to be some of the best emissaries this country has ever had.

NATIONAL ASSOCIATION of MILITARY WIDOWS

4023 — 25th ROAD NORTH
ARLINGTON, VIRGINIA 22207

TELEPHONE: 703 — 527-4565

April 22, 1982

I am Jean Arthurs, president of the National Association of Military Widows, here today to present our views on dependency and indemnity compensation for the surviving spouses who will be affected by this legislation. First, let me thank you for the opportunity to appear before this distinguished Committee.

H.R. 5709 has been introduced to amend title 38 of the United States Code to increase the rates of dependency and indemnity compensation by 8.1 percent for surviving widows and children of a member who died on active duty, and for the survivors of a military retiree whose death in retirement is a result of disease or injury that has been established as being service-connected. It is our view that this increase is necessary to help ameliorate the drastic effects of rising inflation and housing displacement among military widows.

As a matter of priority it is time for Congress to investigate and pass remedial legislation covering dependency and indemnity compensation. Although the Nation has acknowledged a debt to military widows through enactment of the DIC program, many of these fine people are overlooked due to the unchallenged and long-standing inequity between the laws applicable to the federal civil service employess and the federal military service employees. We ask that Congress enact DIC survivor entitlements on the same basis as applies to federal civil service personnel. Military servicemen are paid and administered by the Department of Defense and they are federal employees in every sense of the word -- sharing the same paymaster with civil service employees. For this reason we believe that the widows and dependent children of regular and reserve members of the armed forces should receive survivor compensation on the same basis provided survivors of civil service employees of the government.

A substantial difference in death compensation exists at every pay level between DIC and FECA programs. This is due to the different compensation formulae used to compute survivor benefits under each applicable law. The FECA compensatio formula is computed at 55% of the civilian pay and, in some

cases where children are involved, escalates to 75%. In comparison, the minimum amount of DIC for widows of Privates, Airmen and Seamen in Pay Grade E-1 equals 44.15% of the husband's pay. The maximum amount of DIC for widows of Pay Grade O-10 personnel whose death was job-related after having served over 30 years is 15.7%. DIC is the only known compensation program that is predicated such that the longer one served and the higher rank and greater responsibilities one assumed, the less percentage of compensation the survivor receives.

To avoid these inconsistencies we recommend that the long-established FECA apply to all federal employees, whether military or civil service personnel.

Another issue of concern to military widows is that of benefit termination as a consequence of remarriage after age 62. Bills H.R. 548, introduced by Mr. Roe of New Jersey; H.R. 644, by Mr. Whitehurst of Virginia; and H.R. 1675, by Mr. Young of Florida, provide that the remarriage of the widow receiving DIC after the age of 62 shall not result in the termination of the dependency and indemnity compensation.

The FECA, RSFPP, SBP, and Social Security allow remarriage as a means of permitting the older surviving spouses to live out their lives in comfort and dignity -- and legally married, which tends to be important to their moral standards. DIC is the only program which deprives federal widows of benefits if they remarry after age 60. In the interest of equity among federal employees -- military and civil service -- Congress should show compassion and act to correct this situation. The cost factor involved is actually almost negligible since so few widows do remarry after age 60.

I thank the members of the subcommittee for allowing me to testify today. I will be glad to answer any questions.

Respectfully,

Jean Arthurs
President
NAMW



BLINDED VETERANS ASSOCIATION

1735 DESALES STREET, NORTHWEST • WASHINGTON, D. C. 20036 • (202) 347-4010

STATEMENT OF NATIONAL PRESIDENT ELLSWORTH L. SHARPE
OF THE BLINDED VETERANS ASSOCIATION BEFORE
SUBCOMMITTEE ON COMPENSATION, PENSION & INSURANCE
THE U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON VETERANS AFFAIRS
April 22, 1982

On behalf of the 50,000 blinded veterans throughout the United States, I would like to thank you very much for the opportunity to testify today before this subcommittee.

We are especially pleased for the opportunity to address HR 5709, the "Veterans' Disability Compensation and Survivors' Benefits Amendments of 1982," and the proposed legislation that would suspend VA benefits for certain veterans.

HR 5709 incorporates the administration's 8.1% cost of living adjustment in disability compensation and Dependency and Indemnity Compensation (DIC) for veterans and their families.

When we appeared in early March before the full House Committee on Veterans' Affairs, we commented then that the cost of living adjustment should reflect actual increases in the Consumer Price Index (CPI). In recent years, the CPI has risen faster than cost of living increases in compensation. Usually, this has been the result of time elapsing when the proposal is made initially and when the new benefit levels take effect. What may seem an appropriate increase in the first quarter of the year usually has not met the actual need as reflected by the CPI in the last quarter.

However, we, like most other Americans, are pleased by government reports which show that increases in the CPI have slowed. CPI is still increasing but the rate of increase has declined over the last few months. We hope this trend continues. However, current economic conditions, especially the uncertainty over the economy's future, warrant--at a minimum--the 8.1% increase in compensation.

As some of you probably know after meeting with your constituents during the recent recess, many Americans are very concerned about worsening economic conditions and the effect on their families' economic futures. More Americans are losing their jobs, and in 12 states and the District of Columbia unemployment has hit double-digit figures. The job market has been especially hard on veterans, as a recent Department of Labor report indicated. The unemployment rate for Vietnam-era veterans is 17%--an unacceptably high figure that is almost double the national average.

Prices continue to rise, however, and there seems no end in sight. Food, transportation, housing, and consumer goods are costing us more than ever before. Our veterans, who have incurred disabilities in service to their nation, should be protected from these uncertain economic conditions. Obviously, our government has a responsibility to all Americans to resolve the current economic dilemma, but it has a special obligation--almost in the form of a fraternal trust--to provide for the service-connected disabled veterans, especially when times are bad.

We hope this committee will remember this commitment in the coming weeks as more attention is focused on budgetary matters and as more pressure is brought to bear to cut budgets and benefit levels.

Of course, we welcome any administrative changes in the compensation program that would save money without hurting the service-connected veterans. We are as disturbed that there have been \$3 million in overpayments to veterans, as we would have been disturbed were it \$3 million in underpayments. When money is at a premium, as it is now, we want to be assured that it is being spent appropriately.

This is of special concern to us because we are hopeful that this committee will recommend some changes in HR 5709 along the lines BVA cited in our March testimony before the full committee. We testified then that the existing schedule is inherently unfair to blinded veterans.

We have testified before this committee on several occasions that a veteran who is totally blind in both eyes, without light perception, should be rated equally to a veteran with anatomical loss of the eyes or with eyes having deformity or scarring. Although the veterans are equally without vision in both instances, the latter case currently is rated more disabled than the former. In fact, the inadequacy of the current rating schedule is such that it is possible for a veteran with a deformity or scarring to have some light perception in one or both eyes; yet, he would still be rated more disabled than a veteran with no light perception who is not deformed or scarred.

In the case of a veteran who has lost an extremity, the code provides equal benefit levels not only for the "loss of" that extremity, but also for the "loss of use of" the extremity. A totally blinded veteran without light perception has suffered the "loss of use of" his eyes. Why the schedule treats veterans with visual impairments different from loss of extremities defies logic. We believe that this is simply an oversight and one that deserves the attention of this subcommittee.

The same oversight applies in the case of veterans suffering from a combination of disabilities. Currently, except for a few statutory provisions dealing with loss of hearing in combination with loss of sight, the Veterans Administration assigns percentages of disability for hearing losses occurring in blinded veterans as if such hearing losses occurred in individuals with normal vision. The schedule is also deficient because it fails to adequately recognize the effects of a loss of tactile sense in combination with blindness.

Although we are generally supportive of HR 5709 we would hope that you could incorporate the changes we have just cited. We feel that these are reasonable changes and also we must stress again, as we did in our March testimony, they seem cost-effective.

For example, BVA estimates that switching those totally blinded veterans without light perception who are now rated "m" to subsection "n" would cost less than \$300,000 for the current fiscal year and less than \$1 million for the next fiscal year.

We strongly support legislation that would amend the schedule to correct these inequities, which we have cited here today. We would encourage the members of this subcommittee to review our March testimony that highlights other inequities in the schedule that impact unfairly on blinded veterans. We especially encourage you to read sections on the loss of visual field and visual acuity, and our comments on aid and attendance awards.

In that testimony we commented that the schedule and regulations contain no provisions to rate the loss both of visual field and visual acuity. However, the two, when they occur in combination are considerably more handicapping than when either occurs alone. We urge the committee to consider amendments to the schedule so that blinded veterans with loss of both visual acuity and visual field are rated more disabled.

The schedule also does not adequately compensate blinded veterans who suffer from severe field defects. The normal visual field is 180. This translates into an ability to see everything--with the exception of what is behind you--without turning your head. When a veteran has a field defect such that the widest diameter of visual field subtends an angular distance less than 10 degrees, that is a severe disability. His visual field, then, is less than 6% of the norm. We think he should be rated 100% disabled. Similarly, we feel that a veteran whose visual field subtends an angular distance no greater than 10 degrees should be rated 90% disabled and a veteran with a field of vision no greater than 15 degrees should be rated at 80%. Presently, in all three cases the veteran is rated the same--70% disabled.

One additional item to which we testified in March concerns the aid and attendance award for service-connected disabled veterans. We believe that blinded veterans rated under subsection (n) of Section 314 should be entitled to the lower amount of aid and attendance provided under subsection (r).

As of September 30, 1981, the Veterans Administration listed a maximum of 639 veterans on the compensation rolls who could be helped by making such a change. The total cost to grant the lower tier aid and attendance award (\$844 per month) for the next fiscal year would be no more than \$6.4 million and probably significantly less

due to the number ranked as n 1/2 who already are entitled to subsection (r) because they are also rated under subsection (k). This is a small amount when considering the constituency to be helped and the impact of such assistance.

Such a change in the system would be consistent with the philosophy and rationale behind the VA rating schedule. The schedule was designed to reflect average economic loss. Yet, it is well known that the blind experience greater difficulty in locating jobs and maintaining a regular income than any other segment of the disabled population.

BVA would also like to call your attention to one other item in the proposed legislation and that is the redefinition of a dependent child. The legislation notes that dependency benefits will continue if the child is over 18 in high school. However, these benefit payments will end for a dependent who is attending college. Although this provision is consistent with changes made last year in Social Security--the elimination of the student benefit--we do not support any such provision at this time.

The costs of higher education are increasing and placing heavier burdens on veterans' families. At the same time, grants and scholarships also are drying up. Government assistance is being severely cutback. Certainly, this is not the time to place even greater financial burdens on veterans' families.

BVA enthusiastically supports HR 6039, also introduced by Congressman Hall, which would correct a technical error in DIC. BVA has encouraged this legislation for some time, and we believe this new language will remove any barriers that denied DIC to the families of blinded veterans.

BVA also supports legislation introduced by Congressman Hall--HR 6040--that would provide burial benefits for certain veterans whose remains are unclaimed. We join with the Congressman in this effort. It is indeed a sad fate for a veteran who is not cared for in death as in life. But this--another oversight resulting from last year's budget reductions--would be remedied by this legislation.

Although BVA supports HR 6041 which would authorize the VA Administrator to furnish a burial flag for those buried in national cemeteries eligible under section 1002 (6) of Title 38, we would like to note that traditionally this honor has been reserved to men and women who served their country in the armed forces.

The BVA is also not opposed to HR 4308 which provides benefits for progressive muscular atrophy or amyotrophic lateral sclerosis, and we have no specific comments on the legislation. Also, we have no specific comments at this time on HR 5144 which would make Senior Reserve Officers' Training Corps members who are injured during summer military camp eligible for VA compensation benefits.

It is also our understanding that this committee is considering today draft legislation that would offset VA benefits by the amount received from another financial settlement for the same injury or death. However, we feel we need more time to assess the ramifications and legal intricacies of the draft bill. However, initially, BVA is quite concerned about this bill and how it would affect benefit payments from VA.

It seems that this legislation is seeking to address government double payments relative to disability or death. For example, the government would not pay VA benefits to an otherwise eligible person at the same time a court ruling, or a settlement, provided a financial award to that person. Our initial feeling is that the two should be kept separate--that VA benefits should not be affected in any way by the results of some other legal proceeding. Either the VA benefits are earned or they are not earned. If VA benefits are earned, they should be paid. If a court or some other judicial body should determine that an additional award is warranted with the full recognition that the government already is paying in the form of VA benefits, then, VA benefits should not be affected.

We would like some additional time to consider this legislation. And we plan to assess and analyze the comments of others in order to give fair consideration to the draft legislation.

While we appreciate the opportunity to appear here today to respond to specific legislation that already has been introduced, we hope that you will consider our March 2nd testimony and its specific recommendations for changes in Title 38 as they apply to blinded veterans.

Thank you very much for inviting us here. We always feel so privileged when asked to testify before this committee because it has long placed the needs and interests of a deserving veterans population above political partisanship.

We will be happy to answer any questions you may have.



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ADDITIONAL TESTIMONY OF ELLSWORTH L. SHARPE
BEFORE SUBCOMMITTEE ON COMPENSATION AND PENSION
TO BE INSERTED IN THE PRINTED RECORD

I testified on behalf of the Blinded Veterans Association on April 22 before the Subcommittee on Compensation, Pension, and Insurance. I would like this letter to be submitted with my written testimony as part of the official record.

BVA appreciates the warm reception we received before the Subcommittee, and we are especially pleased by the Subcommittee members' reactions to H.R. 6154 and H.R. 6155 which would correct two serious inequities in the VA disability rating schedule that are unfair to blinded veterans. We are hopeful they will join as co-sponsors of the legislation.

I also would like to add some additional comments on H.R. 5709 which is under consideration by your Subcommittee. As I said in my written testimony, we are generally supportive of H.R. 5709, especially those provisions that call for an 8.1% cost of living adjustment in benefits for veterans and their families.

However, we are opposed to Section 201 of the legislation which would, in effect, eliminate 100% ratings for service-connected disabilities based on individual unemployability. According to that provision, disability payments would be reduced by the amount of other benefits received from Social Security or some other federal benefit program. We are strongly opposed to this provision. Veterans worked to earn social security benefits. The elimination of those benefits is improper.

Social security benefits represent a contract between the employee and the government. The employee contributed money to this fund to receive benefits when needed. Now it is proposed that the program be changed after the contributions already have been made. This represents an abandonment of the government's agreement with the employee.

We strongly believe that the veterans' benefits program should be maintained separately and independently of any other federal benefit program.

Disability compensation payments are earned benefits paid as a result of disabilities incurred in service to the nation. Social security benefits are benefits earned due to employment. Nobody is giving the veteran anything he/she has not earned. Therefore, we are vehemently opposed to this provision.

I would also like to clarify our position on Section 304 of H.R. 5709. The BVA is opposed to this provision, which would, for pension purposes, change the definition of a dependent child. As we stated in our written testimony, this provision will make it more difficult for veterans' families to receive a higher education. We believe this is being proposed at the wrong time since other cuts are being made in federal student assistance programs that will tighten college money as the costs of education rise considerably.

Again, thank you for the opportunity to present our views on these issues.



STATEMENT OF
GORDON H. MANSFIELD, ASSOCIATE LEGISLATIVE DIRECTOR
BEFORE THE
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
OF THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
CONCERNING
VA COMPENSATION, DIC, AND PENSION PROGRAMS
APRIL 22, 1982

Mr. Chairman and Members of the Subcommittee, on behalf of the members of Paralyzed Veterans of America, I wish to thank you for this opportunity to present the views and concerns of PVA regarding the proposed legislation being considered today which includes the compensation, Dependency and Indemnity Compensation (DIC), and pension programs and benefits available to service-connected and non-service-connected disabled veterans and their families. PVA would like to take this opportunity to express its sincere appreciation to each of you for your continued efforts to improve the quality of life for the nation's disabled veterans.

Mr. Chairman, PVA has always supported a viable disability compensation program. This program was initiated to provide for the loss of earning capability, when the diminished capacity results from injury or illness incurred by reason of service to the nation. It would be manifestly unfair to expect that those who have suffered once, because of their answer to the nation's call for service, should again be required to sacrifice the well-being of themselves and their families. Yet, many proposed restructurings of our country's economy seem to indicate that veterans should be treated unfairly because of fiscal constraints. PVA has in the past stressed that increases in compensation should always keep abreast of the effect of inflation for all service-connected disabled veterans, as a minimum guideline for determining benefits for such veterans.

PVA wishes to thank the Members of this Subcommittee, and of the full Committee, for securing passage of Public Law 97-66, the "Veterans' Disability Compensation, Housing and Memorial Benefits Amendments of 1981." This legislation increased the rates of disability compensation for all SC disabled veterans by an average of 11.2 percent. PVA anticipates that the Administration's recommended increase in compensation benefits by 8.1 percent in Fiscal Year 1983 will be adequate to offset the effects of inflation for this year.

Mr. Chairman, when Congress passed the "Veterans' Disability Compensation and Survivors' Benefits Act of 1978" it created a very beneficial law that extends Dependency and Indemnity Compensation benefits to surviving spouses and children of certain veterans who were rated 100-percent service-connected disabled at the time of death, but whose deaths have not been determined by the VA to be service-connected. PVA wishes to thank this Subcommittee for its actions which helped secure passage of this law.

We would also like to thank you for your actions during the First Session of this Congress, when DIC benefits rates were increased by 11.2 percent, an increase which helped veterans' survivors to more closely maintain reasonable standards of living. This increase in DIC was further recognition that certain older spouses of veterans are becoming increasingly reliant on survivors' benefits for their support.

PVA continues to find it bothersome that there remains the inequity that the survivor receives DIC benefits based on the veteran's military pay grade and not on his degree of disability. PVA understands the rationale for awarding benefits based on pay grade when a serviceman dies while on active military service. However, surviving spouses of veterans who were severely disabled for many years deserve a greater benefit.

Too often the surviving spouse of a severely disabled veteran



has provided extensive care to the veteran because of his service-connected disability. The cost of continuous attendant care can and often does greatly exceed the maximum aid and attendance (A&A) allowance for even service-connected disability. The result is that despite the very helpful A&A allowance, the spouse often must provide time-consuming services which the veteran cannot provide for himself. Upon becoming widowed a surviving spouse who receives DIC may be willing to seek employment but she would, in many cases, not have marketable skills due to the constant care needed by the veteran until his death. In addition, the spouse often must seek employment at a time in life when most full-time employees would be considering retirement.

In early 1978 the Veterans Administration presented to Congress and the President its "Evaluation of Benefits under the Dependency and Indemnity (DIC) Program." This study was done pursuant to Section 204 of Public Law 94-433, the "Veterans Disability Compensation and Survivor Benefits Act of 1976." The "Evaluation of Benefits" noted that 48.8 percent of surviving spouses in receipt of DIC received monthly payments based on pay grades E-1 through E-4 and their mean age, as of December 1976, was 60.49 years. The report projected a decrease in the total number of DIC recipients because of spouses' advancing age and the maturation of dependent children. Also important in the reduced number of DIC recipients is that dependent parents are experiencing an increased mortality rate while others are becoming eligible for old-age benefits.

There is a decreasing number of DIC recipients and, based on their financial needs, PVA urges this Subcommittee to propose legislation to restructure the DIC program to care more adequately for the surviving spouses of veterans who served in the lower military pay grades. In these cases DIC should be awarded on the basis of the veteran's degree of disability, not on military pay grade, and we ask that DIC be at least 75 percent of the disabled veteran's monthly compensation rate at the time of death. It must be remembered that these spouses helped disabled veterans live free of expensive institutions, at a savings to the government. Also, DIC benefits based on 75 percent of the veteran's monthly compensation rate will be computed only on basic compensation and will not include awarding a surviving spouse any portion of the veteran's aid and attendance allowance. PVA feels that this is a reasonable request for spouses who have served the nation by helping care for service-connected disabled veterans.

Recently PVA randomly surveyed nearly 100 surviving spouses who are in receipt of DIC benefits. We found that 56 percent were over fifty years of age. Approximately 88 percent were married to 100-percent service-connected disabled veterans for more than 10 years each. Sixty-six percent were married to such veterans for over twenty-one years. Obviously our belief is correct that numerous surviving spouses are left alone in life at a time when employment is difficult for them to achieve. This too often comes after they have helped care for severely and catastrophically disabled veterans for

extended periods of their lives. PVA sincerely trusts that this Subcommittee will recommend legislation aimed at providing more adequately for these very deserving spouses of service-connected disabled veterans.

A second amendment to Title 38, United States Code, which PVA strongly supports relates specifically to DIC benefits for dependents when veterans have experienced spinal cord injuries or dysfunction. With the onset of such disability other bodily systems can break down in a complex manner. For instance, cardiovascular problems can arise very soon after spinal cord injury or dysfunction, and there is a high occurrence of diabetes because of urinary tract malfunction and/or hormonal imbalance. For many SCI veterans these are life-threatening conditions which arise directly from service-connected disabilities but which are not considered as being of service-connected origin for benefits purposes. The law currently provides that if the SCI veteran dies within 10 years from onset of service-connected disability, but from causes not directly attributed to spinal cord injury or dysfunction, his surviving spouse and dependents do not qualify for DIC benefits. Therefore, PVA requests that Section 410(b)(1) of Title 38 be amended so that in the case of any veteran who has been rated as service-connected disabled because of spinal cord injury or dysfunction resulting in paraplegia or quadriplegia for a period of less than 10 years, and such veteran dies as a result of any disease, DIC benefits shall be paid to the surviving spouse and/or children in the same manner as if the

veteran's death were service-connected.

PVA trusts that this Subcommittee will give serious consideration to our suggested amendments, whereby DIC benefits would be based on the veteran's degree of disability at the time of death and whereby survivors of spinal cord injured veterans would be eligible for DIC benefits should the veteran die from any disease within the first ten years after his service-connected spinal cord injury. We feel wholeheartedly that these two amendments to Title 38, United States Code, are urgently needed and are clearly justified.

I would like to now turn my attention to some of the specific legislative proposals which are being addressed by the Subcommittee today. First, I would like to give PVA's analysis of H.R. 5709, a bill which would provide for an increase in compensation and DIC benefits of approximately 8.1 percent and which would make certain other changes in the provisions of Title 38, United States Code.

As was noted earlier, PVA feels that this is a reasonable rate of increase in these benefits because it seems to accurately reflect the anticipated rate of inflation. We fully support this provision of H.R. 5709 and are very grateful to the Members of this Subcommittee and of the full Committee for working with the Administration to ensure that the Fiscal Year 1983 budget request for the Veterans Administration contains funding to provide for this reasonable increase in

benefits for service-connected disabled veterans and their families.

At this time I would like to address other provisions of H.R. 5709, and I shall approach them in the order in which they appear in the bill. Section 201 of the bill would amend Section 3104 of Title 38 by adding a new subsection. This addition would, according to the bill, discontinue duplicative payments to certain veterans, a proposition which on its face sounds reasonable. However, PVA looks at the "duplicative" payments which are to be prevented and finds Section 201 of H.R. 5709 to be completely unreasonable and unsatisfactory.

PVA completely opposes enactment of Section 201 of the bill because it would require unemployable service-connected disabled veterans to elect between compensation benefits and other retirement or disability benefits, in that their combined benefits could not exceed the compensation benefits to which they are entitled. Quite succinctly, compensation benefits are awarded to those who have been disabled in service to the nation. These benefits exist to offset the individual's diminished earning capability. Secondly, veterans often have paid into Social Security or other contributory programs before entering the active military service, and they continue to pay into the Social Security Trust Fund while in receipt of military pay. Benefits available under Social Security are the property right of the payor and are not a free gift as H. R. 5709 assumes them to be. Rather, the

veteran has paid dearly for compensation benefits (frequently without a choice) and has paid into the Social Security program (again without a choice).

Section 201 would mix unrelated items, the veteran's compensation benefits and his contributory-program benefits. PVA sees Section 201 as merely an effort to deny service-connected disabled veterans that to which they are entitled both as paying citizens and as citizens who have been disabled in service to the country. Section 201 would accomplish this merely because both programs are centered in the federal government. Should the individual veteran be allowed to apply his amount of payments into Social Security to some other, private, retirement and/or disability program, there would be no question that he could draw from this program and remain entitled to compensation benefits.

PVA speaks of Social Security benefits, as addressed in Section 201, because of their familiarity to all of us, but this section would apply to a variety of other programs such as contributory programs for federal employees and railway workers. Should Section 201 be implemented into law, PVA would see it as nothing more than an effort to strong-arm many service-connected disabled veterans out of benefits to which they are entitled.

The Administration supports passage of Section 201 in an effort to save the government \$282.5 million in Fiscal Year 1984. It would save this money quite frankly by stealing from those who

have already given of themselves in defense and service to the nation and who are now least able to defend themselves. We are grateful that the full Committee, in its March 15, 1982, "Report to the Committee on the Budget," rejected the Administration's suggestion because it would apply an unjust means test to service-connected disability compensation benefits, and we ask you to remain firm in your commitment and oppose passage of this measure.

Section 301 of H.R. 5709 would add a new section to Title 38, United States Code, to delay payment of compensation, DIC, and pension benefits until the first month after eligibility. PVA appreciates the full Committee's reluctant acceptance of the Administration's recommendation to apply this provision to pension benefits at a savings to the VA in Fiscal Year 1983 of \$19.8 million in Budget Authority. We also appreciate the Committee's opposition to applying this provision to compensation benefits, a provision which the Administration estimates would save the VA \$9 million in Fiscal Year 1983.

PVA quite naturally does not want to see veterans benefits reduced, and we appreciate the Committee's approach to pension and compensation; however, we recognize that in a time of fiscal constraint sacrifices must be made. Therefore, PVA would accept passage of Section 301, as it is expressed in H.R. 5709, without opposition, in an effort to save the VA an estimated \$28.8 million in Budget Authority during Fiscal Year 1983. We only ask that this very significant savings be applied to other VA

programs and benefits which face budget reductions but which are urgently needed by beneficiaries of them.

PVA also differs slightly with the full Committee on Section 303 of H.R. 5709, a measure which would provide pension payments "only in an amount that is a multiple of \$1." We recognize and appreciate this Subcommittee's efforts during reform of the pension program, despite our opposition to some of the provisions of Public Law 95-588, the "Veterans' and Survivors' Pension Improvement Act of 1978." And, we are grateful for your support of pension beneficiaries and of your desire that their benefits not be curtailed. Yet, this measure would curtail benefits less than \$12 per year for each beneficiary and would save the government \$10.8 million in Fiscal Year 1983.

It must be stressed that PVA has a very significant number of non-service-connected disabled veterans as members, and that we understand they would be the ones to bear this reduction in benefits. But, we would accept this slight reduction in benefits if the Administration and the Congress conclude that some of the very poorest of Americans, citizens who have served the nation, should have their benefits reduced as the only way to save the VJ and its budget. After all, the Administration's entire Fiscal Year 1983 budget repeatedly paints a picture of gray gloom of the American economy and indicates that we all must make sacrifices.

Either there is a cause to deny these needy people about \$12 each year, in which case the economy is truly in bad shape, or

there is no safety net and the Administration merely seeks to take each cent it can from those who need it most. PVA therefore defers to this Subcommittee and to the Administration to determine if it is necessary that pension benefits be reduced in this manner as a way of preserving the very beneficial pension program and the Veterans Administration.

PVA's comments on this point are not meant to sound sarcastic, and I trust that no one interprets them that way. But we are somewhat confused: we are willing to make sacrifices if they are actually needed, just as we have sacrificed for the nation before. However, it is somewhat difficult for us to interpret what the Administration suggests, because we see so much federal money spent on other, more glamorous matters. PVA is trying to be very serious and responsible as it looks at the VA's FY'83 budget and the impact it will have on veterans benefits, but it is difficult for us to accept cuts in benefits when we continue to see the government waste money for frivolous and decorative purposes. Again, we are willing to make sacrifices, but are such radical sacrifices needed?

PVA strongly opposes Section 304 of H.R. 5709, a provision which would deny pension benefits to dependents of non-service-connected disabled veterans as they, the dependents, pursue programs of advanced education. We recognize that the Committee reluctantly supports the Administration in this matter, as a means of saving an estimated \$13.4 million in Fiscal Year 1983. PVA differs with the Committee's view on this matter and the rounding of pension benefits to the nearest \$1--we feel that the \$10.8

million saved from rounding should be applied to maintaining pension benefits for dependents who pursue educational goals. This is the reason, as stated previously, that PVA differs with the Committee on rounding. In short, we see rounding as a harsh sacrifice for NSC veterans in receipt of pension; however, denying pension to needy dependents of NSC veterans in receipt of pension is an even harsher sacrifice, one which affects veterans and their families, and one which would adversely affect the nation for several more generations.

Pension recipients are, as noted above, some of the nation's less prosperous citizens, and by very definition pension benefits are means tested. Consequently, those in receipt of pension cannot afford to help their children pursue educational goals.

Other education assistance programs are being greatly curtailed, and children of pension beneficiaries are likely to find no assistance. Consequently, there is very likely to be a waste of human lives and abilities because of the Administration's policies and/or the true condition of the economy. Pension beneficiaries, like most Americans, want the very best for their children, and those children, if properly educated, will repay the government many, many times during their working years. In short, pension benefits would come at a time in their lives when those benefits are most needed; they would give veterans in receipt of pension the satisfaction of seeing their children live more full, productive lives.

PVA feels that veterans in receipt of pension would gladly sacrifice approximately \$12 per year in order for their children, or the children of similarly situated veterans, to be given some assistance during this important stage of their lives. We therefore disagree with the Committee only out of slightly different approaches to financing certain programs, not on our mutual basic desires to care for destitute veterans who have rendered valuable service to the nation.

Mr. Chairman, PVA is especially concerned with the proposed legislation which would require offsetting from VA benefits the amount received from another financial settlement for the same injury or death. This legislation is opposed in principle and in the specific inequities it would create. We have already seen this provision applied to a small number of DIC recipients in Section 410 (2), Title 38, United States Code. Now, we see an attempt to expand an offset of payments to those veterans entitled to compensation and pension.

PVA feels this is unjust, inequitable, and unconscionable action on behalf of the government which the individuals concerned have chosen to serve and defend with their lives. Compare the effect to that of a corporate executive when death occurs while traveling on company business. Would an award in a wrongful death action stop payment of other benefits to the widow or family? Would company retirement benefits be returned to the corporate treasury because an airline insurer was forced to recompense the family?

Would company insurance policies be offset by that amount? The intent of this legislation seems to presume that compensation payments are made in full payment of the loss incurred. How do we set a value on loss of life or limb? The government in its determination of compensation payments uses an average value basis for determining payment of compensation. A general and a private who incur the same injury are entitled to the same monthly payment of compensation. DIC payments are based solely upon the pay grade of the serviceman. None of the criteria such as age, education, health condition, employment record, or anticipated earnings used by civil courts in determining personal injury awards are even considered. This system means that some will receive less than they might be entitled to in a civilian court action and some might receive more.

PVA does not believe that those veterans or their families who might be able to recoup some of the loss through receipt of a money or property damage award deserve what this legislation proposes. And, if the government is still concerned about that money perhaps they could also recoup funds. A soldier is government property. If other property is destroyed, the government receives restitution. For example, if an automobile destroys guardrails, fences, telephone poles on government property the driver is liable for that damage. Let the government file suit for the cost of enlistment, training, maintenance, and replacement of its dead or maimed soldier.

PVA would like to give special emphasis to H.R. 4308 and its sponsor, the Honorable John Paul Hammerschmidt, a distinguished

Member of this Subcommittee and the Ranking Minority Member of the full Committee and one of the nation's outstanding spokesmen for veterans. Specifically, H.R. 4308 would provide a presumptive period of seven years for amyotrophic lateral sclerosis (ALS) and progressive muscular atrophy. ALS is one of the most formidable illnesses known to mankind, commonly leaving its victims after onset with a life expectancy of only 2 to 5 years. Fortunately it affects a very limited number of persons, but its origins remain largely a mystery.

Last Congress, Representative Hammerschmidt introduced a similar legislative proposal, and PVA gave it our complete support. We appreciate his continuing concern for victims of ALS and beseech this Subcommittee to give favorable consideration to H.R. 4308, which would give ALS victims the same consideration for service-connection as it does to those who experience multiple sclerosis (MS), another awesome neurological disease. ALS, unlike MS, is a continuously progressive disease which never stabilizes, but is like MS in that both are physically and financially destructive to the affected individuals.

In conclusion, Mr. Chairman, PVA wishes to thank you and the Members of the Subcommittee for ensuring that increases in compensation and DIC programs are sufficient to offset the effects of inflation as a minimum guideline for determining benefits for service-connected veterans and their families. PVA also supports the intent of legislation proposed in H.R. 5144, H.R. 6040, H.R. 6041, and H.R. 6039. PVA is especially supportive of H.R. 4308 which

would provide the existing seven-year presumptive period for multiple sclerosis to those veterans who have incurred amyotrophic lateral sclerosis and progressive muscular atrophy. PVA is unalterably opposed to certain other proposals presented for consideration today. Offsetting compensation, pension, and DIC entitlements by the amount of awards received in causes of action or by receipt of Social Security Disability Income payments is asking those who have incurred injury or disease through service to the country to sacrifice again. Denying payments to children of veterans on pension who are seeking post-secondary education is forcing those families already defined as "truly needy" to suffer further economic problems because of illogical fiscal constraint. Mr. Chairman, actions such as these are the reason PVA last year called for the establishment of a Presidential Commission to make informed recommendations on cost savings for the Veterans Administration. As indicated above, PVA will support those initiatives which result in savings to the government but do not unduly and illogically require the veterans of this country to bear a double burden.

Thank you, Mr. Chairman. That concludes my testimony. I will answer any questions that I can.

STATEMENT OF JOHN F. SOMMER, JR., DEPUTY DIRECTOR
NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION
BEFORE THE SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
COMMITTEE ON VETERANS AFFAIRS
HOUSE OF REPRESENTATIVES
APRIL 22, 1982

Mr. Chairman and Members of the Subcommittee:

The American Legion appreciates this opportunity to share its views with you on the several measures under consideration today, as well as other issues of importance to this organization, all of which pertain to benefits for veterans, their dependents and survivors.

Before addressing the legislative proposals under discussion, may it be said that The American Legion is sensitive to the fact that the nation is in a period of recession and economic complication requiring fiscal restraint in Federal expenditures. It is also acknowledged that veterans must share in those restraints.

And the point must be made that the percentage of the total Federal Budget consumed by veterans programs has been steadily declining, which indicates that veterans are making a contribution to the national effort to balance the budget. The American Legion is also aware of the dedication and interest of the Members of this Subcommittee and of the entire House Committee on Veterans Affairs in ensuring that economy is not practiced at the expense of the veterans of this nation, particularly those veterans who are severely disabled. We are confident that this Body will continue to responsibly address the genuine needs of these veterans, and their dependents and survivors, in the face of fiscal austerity.

We shall now address ourselves to the measures currently under consideration.

H.R. 5709 - to amend title 38, United States Code, to increase the rates of disability compensation for disabled veterans; to increase the rates of dependency and indemnity compensation for surviving spouses and children of veterans; to discontinue duplicative payments to certain veterans; to increase the level of disability required for the payment of dependents allowances; to provide for cost-saving improvements in veterans programs; and for other purposes.

Section 314 of the title currently provides for the payment of compensation in the amount of \$1,130 monthly of those veterans with service-connected disabilities rated 100 percent or totally disabling. Higher rates of special

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monthly compensation are payable for certain multiple disabilities evaluated in excess of total, based upon the severity thereof. The monthly benefits for those veterans whose service-related impairments are evaluated from 10 percent to 90 percent range from \$58 to \$734.

Additional monthly compensation is provided under section 315 of the title for the spouses, children and dependent parents of those veterans entitled to benefits under section 314, and whose service-connected disabilities are evaluated at 30 percent or more.

Section 101(b) of this bill would allow that the Administrator of Veterans Affairs may adjust administratively, consistent with the increases authorized by this section, the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857, who are not in receipt of compensation payable pursuant to chapter 11 of the title.

An annual clothing allowance is provided under 38 USC 362 to each person who, because of disability which is compensable under the provisions of chapter 11, wears or uses a prosthetic or orthopedic appliance or appliances which the Administrator determines to wear out or tear the clothing of such a veteran.

Dependency and indemnity compensation, as provided under section 411 of this title, is payable to the surviving spouse, based upon the military pay grade upon whose service-connected death entitlement is attributed. These pay grades range from E-1 through O-10, and the current monthly benefits under the DIC program range from \$415 to \$1,147. Where there is an eligible child or children of the veteran, these rates are increased by \$48 monthly for each child under present law. Subsections (c) and (d) of section 411 relate to aid and attendance and housebound benefits for surviving spouses and are payable at the rates of \$125 and \$62 respectively. Sections 413 and 414 of the title provide for specific payments for children of the veteran under certain circumstances.

The latest increase in the monthly rates of disability compensation and dependency and indemnity compensation was provided under Public Law 97-66, effective October 1, 1981. For those entitled to receive these benefits to keep pace with the increasing costs of goods and services, the rates payable must respond to cost-of-living increases.

H.R. 5709 calls for an 8.1 percent increase in the foregoing monthly benefits, as well as the clothing allowance, which is paid annually. The

American Legion is certainly supportive of cost-of-living increases in the service-connected disability and death benefits, and the 8.1 percent increase appears to be consistent with the current rate of inflation, projected to October 1, 1982.

Section 201 of H.R. 5709 would amend section 3104 of the title by adding a new subsection which, effective September 30, 1983, would in effect eliminate 100% ratings for service-connected disabilities based upon individual unemployability. Under the new subsection, where a rating of total disability based on individual unemployability has been assigned to any veteran in receipt of benefits under title II of the Social Security Act or any other Federal program providing monetary benefits for disability or retirement, compensation under section 314 or 315 of the title would not exceed the greater of - (1) the amount payable to the veteran under a schedular rating based upon the criteria contained in subpart B of part 4 of title 38, Code of Federal Regulations, or (2) the amount payable to the veteran on the basis of a rating of total disability by reason of individual unemployability, reduced by the amount of benefits payable for that month under title II of the Social Security Act or such other Federal program.

To The American Legion such a proposal is contemptible.

In order to fully express our concerns about this proposed amendment, it is necessary to provide a short illustration of the history of individual unemployability.

Under the authority of section 202 of PL 68-242, the World War Veterans Act, 1924, as amended, an explanatory statement known as Extension No. 11-A to the Schedule of Disability Ratings was promulgated on January 15, 1932. Paragraph (5) of this Extension states "Accordingly, for purposes of both paragraph R-1115 and Extension No. 11, permanent and total disability may be conceded in a proper case where there are present two or more disabilities, affecting entirely different functions, one of which is 65 percent disabling and which combined by present methods to 85 percent. These evaluations, however, upon which permanent and total disability may be conceded are not intended to be rigid unalterable standards. These are cited as illustrative and to be used as guides."

During subsequent years a very substantial amount of interest was associated with this subject and a great deal of emphasis was placed on the interpretation

and application of this extra-schedular benefit by the service organizations. On February 5, 1940, following the Washington Rehabilitation Conference, a group of American Legion officials met with then Administrator of Veterans Affairs General Frank T. Hines, and recommended that the interpretation of what constitutes permanent and total disability be widened so as to take into consideration those veterans who because of their physical or mental disabilities were unemployable.

On April 2, 1942, General Hines issued a Veterans Administration Service Letter, the subject of which was "Total Disability Ratings under Public No. 2, 73d Congress and the 1933 Rating Schedule."

Paragraph (1) of the Service Letter stated in part: "1. The attention of all rating agencies is directed to the following statement of policy approved this date which is quoted herewith for the guidance of all concerned:

"Total disability ratings under Public No. 2, 73d Congress and the 1933 rating schedule may be assigned without regard to the specific provisions of the rating schedule, except as outlined herein, when the disabled person is, in the judgement of the rating agency, unable to secure or follow a substantially gainful occupation as a result of his disabilities: Provided that, if there is only one disability, this disability shall be ratable at 60% or more, and that, if there are two or more disabilities, there shall be at least one disability ratable at 40% or more, and sufficient additional disability to bring the combined rating to 70% or more. Total disability ratings, when the above conditions are met, may be granted for deafness, the organic loss of speech, for the amputation or loss of use of either hand or of either lower extremity above the knee (as to these amputations and losses of use, when followed by continuous unemployability after incurrence), as single disabilities or for other organic disabilities or combinations including organic disabilities."

Paragraph (5) of the statement of policy quoted in the Service Letter states in part:

"5. It is the policy of the Veterans Administration to resolve the benefit of all reasonable doubt in favor of claimants, to the end

that every veteran who is unable to secure and follow substantially gainful employment, with disability as the cause of such inability, will be given full consideration. Rating agencies will exercise great care in the determination of total disability and permanent and total disability to make sure that all claims are properly rated, based on the facts found."

Continued interest on the issue of service-connected disability compensation, particularly the subject of total ratings based upon individual unemployability, and the interchange of information thereon between the veterans organizations and the VA, precipitated a letter from Administrator Hines to the rating agencies in all field stations. The letter stated in part:

"During the past year considerable attention has been given to the modification of the Second Edition of the 1933 Schedule of Rating Disabilities. Considerable interest has been evidenced by the major service organizations on this subject during their conventions and such organizations have been appropriately advised as to action taken and action contemplated. In order that you may be conversant with advices so given there is announced herewith the essential text of letters written to The American Legion, Veterans of Foreign Wars of the United States and the Disabled American Veterans of the World War.

"It has been determined to liberalize the practice under the Service Letter dated April 2, 1940, as regards the requirement of continuous unemployability after incurrence of amputations and similar static disabilities by permitting exceptions in the event the employment which was secured was only occasional, intermittent try-out, unsuccessful, or eventually terminated by some incident of the disability. The practice will also be liberalized in the matter of establishing one disability of 60%, or 40%, as required, or other numerical requirements to include all bilateral disabilities, disabilities resulting from a single accident, or affecting a single body system. The effect of advancing age, non-service disabilities, etc., without increase in the degree of service-connected disability may not be utilized to authorize increased ratings in the service-connected group. It has not been found practicable to define substantially gainful occupation on the basis of one-half the usual wages or the usual time otherwise than on consideration of the facts in individual cases."

Administrator Hines, after further addressing the issue of unemployability and other matters relating to the rating of disabilities, closed the letter as follows:

"It is thought only fair to invite attention to the fact that the Administration must furnish a convincing justification for increased appropriations which would result from schedule liberalization. Actual need, on account of inadequate payments in relation to average impairment in earning capacity, going beyond mere opinion favoring liberalization, must be established. We are always willing to consider individual claims, properly referred with prima facie evidence of schedule inadequacy applied to the individual case. On the basis of such submissions, primarily, defects in the schedule are brought to attention and adjustments effectuated. In dealing with the large groups of disabled veterans affected, increases are necessarily considered with considerable caution.

"It is the effort of the Administration to keep the rating schedule at the levels indicated by available information as to employment and earning capacity of disabled persons, and also abreast of changing medical concepts, and further suggestions, preferably affecting only one field or type of disability at a time, will be welcomed."

Subsequently, on November 15, 1941, under the authority contained in Veterans Regulation No. 3(a), issued pursuant to PL 73-2, a readjustment of the 1933 Schedule for Rating Disabilities, known as Extension No. 4, was promulgated.

Paragraph (1) of Extension No. 4 states in part: "Total disability ratings under Public No. 2, 73d Congress and the 1933 rating schedule may be assigned without regard to the specific provisions of the rating schedule when the disabled person is, in the judgement of the rating agency, unable to secure or follow a substantially gainful occupation as a result of his disabilities. Provided, that, if there is only one disability, this disability shall be ratable at 60% or more, and that, if there are two or more disabilities, there shall be at least one disability ratable at 40% or more, and sufficient additional disability to bring the combined rating to 70% or more."

Paragraphs 2(a) and (b) of Extension No. 4 state as follows:

"(a) For the above purpose of one 60 % disability, or one 40% disability in combination, or the reduced numerical requirements

according to age, the following will be considered as one disability:

"(1) disabilities of one or both upper extremities, or of one or both lower extremities, including the bilateral factor, if applicable, or

"(2) disabilities resulting from a single accident [, or]

"(3) disabilities affecting a single body system, e.g., digestive, respiratory, cardiovascular-renal, neuropsychiatric.

"(b) Instances will arise in which the effect of a single or multiple disabilities not ratable as 100%, 1933 schedule, is regarded as sufficiently severe to incapacitate the average person, although the individual is employed under favor, or under special consideration, or upon work-relief, in lieu of, or supplementing, direct relief. Such cases will continue to be referred [to Central Office] under R.&P. R-1142."

Mr. Chairman, we have tracked the history of the individual unemployability benefit and provided the foregoing chronology for the purpose of demonstrating the importance that has been placed on it, the deliberations it has undergone, and the substantial amount of reasonable thinking that has been interposed in the development thereof.

The disability compensation program for veterans has been scrutinized by Presidentially appointed Commissions, Congressional Committees, and agency studies conducted by the Veterans Administration itself. The basic purpose of disability compensation has always been economic maintenance, and the loss of earning capacity as the result of disability has continued to be the primary rating criteria. However, it has also always been recognized that human life has values beyond the economic sphere and other factors such as loss of physical vitality and shortened longevity must be taken into consideration. The Veterans Administration, at the request of this Committee, last year reviewed 68,086 cases of severely disabled veterans with total ratings based upon individual unemployability. Of those reviewed, approximately 5 percent were reduced. However, over three times that number were elevated to schedular 100% ratings.

Individual unemployability has survived all of the scrutinization, the studies, and the reviews of the compensation program virtually unscathed. It has stood the test of time. Is it now fair to assume that in an effort to produce cost savings that benefit should be placed in the same category as the

nonservice-connected pension program? Should the payment of this entitlement to veterans, severely disabled as the result of service to their country, be limited by the amount they receive from Federal programs to which they have contributed when able to work? The American Legion thinks not. Mr. Chairman, we urge that section 201 of H.R. 5709 not be enacted.

Section 202 of this measure would amend section 315 of the title, so as to eliminate dependency allowance for those veterans with service-connected disabilities evaluated at 30 and 40 percent.

The American Legion is not in agreement with this proposal. These are serious levels of disability, and the dependency allowances are of direct help to the recipients who have dependents. A good illustration of the economic hardship that this proposal would create, if enacted, is given by comparing the compensation paid a veteran rated 50 percent disabled with that paid 40 percent - both have a spouse and three children:

Veteran with disability rated 50 percent

Disability Compensation \$328

Additional compensation for wife

and three children \$ 96

Total \$424

Veteran with disability rated

40 percent \$232

This is a difference of \$192 per month, and would be a significant loss of income to a veteran with spouse and three children whose rating is reduced from 50 percent to 40 percent. Under current law the veteran with disability rated 40 percent receives compensation in the amount of \$309 per month as the result of additional compensation for dependents. The American Legion, for these reasons, views section 202 of H.R. 5709 unfavorably.

Section 301 of this legislative proposal would amend chapter 51 of the title by inserting a new section 3011, which would provide that payment of monetary benefits based on an award or an increased award of compensation, dependency and indemnity compensation, or pension shall not be made for any period prior to the first day of the calendar month following the month in which the award became effective. In the interim, between the actual effective date and the date benefit payments actually commence, an individual entitled to receive

monetary benefits shall be deemed to be in receipt of such benefits for the purpose of other laws administered by the Veterans Administration.

Under this proposed section, if any person who is in receipt of retired or retirement pay as the result of service in the Armed Forces, or as a commissioned officer of the National Oceanic and Atmospheric Administration or of the Public Health Service would also be eligible to receive compensation or pension upon the filing of a waiver of such pay, the waiver would not become effective until the first day of the month following the month in which the waiver was filed, and nothing in the proposed section would prohibit the receipt of retired or retirement pay for any period prior to such effective date.

The proposed section would apply to payments made pursuant to section 3110 of the title only if the monthly amount of dependency and indemnity compensation or pension payable to the surviving spouse is greater than the amount of compensation or pension the veteran would have received for the month in which such veteran's death occurred.

Section 302 of this bill would amend section 3012 (b) (2) of title 38, by providing that the effective date of a reduction or discontinuance of compensation, dependency and indemnity compensation, or pension, by reason of marriage, annulment, divorce, or death of a dependent of a payee shall be the last day of the month in which such change of status occurred. Under current law the effective date of the reduction or discontinuance is the last day of the calendar year.

Section 303 of the measure would amend section 3020 of the title by adding a new subsection which would provide that any payment of pension benefits to veterans, dependents and survivors under section 306(a) of PL 95-588, or section 521, 541, or 542 of the title shall be made only in an amount that is a multiple of \$1. If the amount payable is not a multiple of \$1, then it shall be rounded off to the next lower dollar.

The American Legion will accept these proposals, although reluctantly, as part of the effort toward fiscal restraint, as none of the foregoing would place a severe hardship upon the benefit recipient.

Section 304 of H.R. 5709 would amend section 501 of the title of adding a new paragraph which would, for pension purposes, change the definition of a dependent child while in education status. The term "child" would include a child who is over the age of eighteen if such child is pursuing a program of

education for the purpose of receiving a secondary school diploma and is under the age of nineteen, but does not include a child over the age of eighteen who is not pursuing a program of education unless such child before attaining the age of eighteen became permanently incapable of self-support. The amendment would not apply to any child to or on behalf of whom pension or additional pension for the month of September 1982 would be payable under section 521, 541, or 542 if the child would attain the age of eighteen prior to October 1, 1982, the proposed effective date.

Section 304, if enacted, would further provide that pension payable to or on behalf of any child under section 521, 541, or 542 or section 306(a) of PL 95-588, on the basis of the child's pursuit of a course of instruction at an approved educational institution would not be paid for the months of May, June, July, and August, beginning with the month of May 1982; and not be paid for any month after July 1985. This section would further provide that such pension benefits would not exceed for any month the amount of the pension or additional pension (attributable to such child) for the month of August 1981 (or a later month if the Administrator would deem a later month appropriate under the circumstances), reduced by an amount during the months after July 1982 and before August 1983, equal to 25 per centum of the benefit payable for August 1981 (or such later month); during the months after July 1983 and before August 1984, equal to 50 per centum of the benefit payable for August 1981 (or such later month); and during the months after July 1984 and before August 1985, equal to 75 per centum of the benefit payable for August 1981 (or such later month). The benefits would not be paid for any month after July 1982 if such pension or additional pension is discontinued at any time after July 31, 1982, by reason of such child's discontinuance of pursuit of a course of instruction at an approved educational institution.

The American Legion is opposed to the proposed change in definition of a dependent child from age 23, while in education status, to age 19, as well as the other proposed reductions in benefits contained in this section. Pensioners are by definition subsisting at the poverty level, and are in need of all the assistance that can be given them. Where there are children involved, in pursuit of an education, the loss of this benefit hurts not only the veteran, but also jeopardizes the opportunity of the veteran's children to reach above

the poverty level, through education and training advantages. Furthermore, the Legion is mandated by Resolution No. 250 (Ohio) approved by the 1981 National Convention, to seek improvements in the pension program for surviving spouses and children. The provisions proposed by section 304 are in direct conflict with the intent of our mandate.

H.R. 5144 - to make members of the Senior Reserve Officers Training Corps programs who are injured during summer military camp eligible for VA benefits.

This measure would amend section 101(22) of the title to include in the definition of the term "active duty for training", annual training duty performed by a member of a Senior Reserve Officers Training Corps program when ordered to such duty for a period of fourteen days or more. This amendment, if enacted, would apply with respect to diseases and disabilities incurred or aggravated after September 30, 1982.

The American Legion would have no objection to the enactment of this measure, as it would provide compensation to those individuals injured during official training, preparatory to fulfilling an obligation of active military service.

H.R. 4308 - to provide a presumptive period of seven years for amyotrophic lateral sclerosis or progressive muscular atrophy.

This proposal would amend paragraph (4) of section 312 of the title, to provide that progressive muscular atrophy or amyotrophic lateral sclerosis developing a 10 per centum or more degree of disability within seven years after separation from active service during a period of war shall be presumed to be service-connected.

Amyotrophic Lateral Sclerosis (ALS) is a degenerative disorder of the motor neurons in the spinal cord, brain stem, and motor cortex, manifested clinically by muscular weakness and atrophy in various combinations. Because of the rarity of the disease and in many cases the difficulty in diagnosis, The American Legion would not object to the enactment of this bill.

Mr. Chairman, we would like to invite your attention to a similar legislative proposal, H.R. 1149, which would amend section 312(a) of title 38, United States Code, to provide a seven year presumptive period for syringomyelia.

Syringomyelia is a chronic, progressive disease of the spinal cord and medulla, characterized clinically by a dissociated sensory loss, muscular

atrophy, trophic changes and spasticity. In its early manifestations, the symptoms, like those of multiple sclerosis, are vague and fleeting, making the initial diagnosis difficult, and in some cases surgical exploration may be necessary to confirm the diagnosis.

The Legion feels that because of this vague and indeterminate onset, there is good reason medically to support the enactment of this legislation.

H.R. 6040 - to provide eligibility for burial benefits from the Veterans Administration for certain veterans whose remains are unclaimed.

This measure would amend section 902(a) of the title to provide that when a veteran dies who was in receipt of compensation (or but for the receipt of retirement pay would have been in receipt of compensation) or who was in receipt of pension; or in the case of a veteran of any war or a veteran who was discharged from the active military, naval, or air service for a disability incurred or aggravated in line of duty, whose body is held by a State (or a political subdivision of a State) and with respect to whom the Administrator determines that there is no next of kin or other person claiming the body of the deceased veteran; and that there is not available, from the deceased veteran's estate or otherwise, sufficient resources to defray the cost of the burial and funeral of the deceased veteran, the Administrator, in the Administrator's discretion, having due regard to the circumstances in each case, may pay a sum not exceeding \$300 to such person as the Administrator prescribes to cover the burial and funeral expenses of the deceased veteran and the expense of preparing the body and transporting it to the place of burial, etc. This amendment would take effect with respect to deaths occurring after September 30, 1982.

Mr. Chairman, the enactment of this legislation would be beneficial in alleviating situations which have been reported, albeit in some cases exaggerated due to absence of facts, in the news media where the remains of deceased veterans have been held for extended periods of time in morgues because of lack of funds with which to provide them a decent burial.

However, The American Legion feels that the elimination of the burial benefit for veterans in the Budget and Reconciliation Act of 1981 was a mistake, and that eligibility should be restored to all those who were entitled to this benefit prior to the enactment of that law. The burial benefit is the single monetary benefit that has been available to all war veterans to ensure that

they receive a decent burial. In a substantial number of cases the burial allowance is the only Federal benefit received in recognition of the veterans honorable wartime service.

The American Legion is mandated to strive for the restoration and payment of the burial allowance for veterans as the result of Resolution No. 336, approved by the Delegates to the 1981 National Convention, and H.R. 5463 has been introduced in our behalf, seeking such restoration. We respectfully request the support of this Subcommittee to advance this legislative proposal.

H.R. 6039 - to correct a technical error with respect to entitlement to dependency and indemnity compensation.

This bill would amend section 410(b)(1) of the title by including language to clarify the intent of the section, and The American Legion is supportive thereof.

Mr. Chairman, that concludes our statement.

SIXTY-THIRD ANNUAL NATIONAL CONVENTION OF THE AMERICAN LEGION
HONOLULU, HAWAII, SEPTEMBER 1, 2, 3, 1981

RESOLUTION: No. 250 (Ohio)

COMMITTEE: Veterans Affairs and Rehabilitation

SUBJECT: Support legislation to amend title 38, USC, Chapter 15, to further improve the disability and death pension program for veterans and their dependents

WHEREAS, Public Law 95-588, the Veterans and Survivors Pension Improvement Act of 1978, effective January 1, 1979, did provide major changes in the pension program for veterans of World War I, World War II, the Korean and Vietnam Wars, and for their surviving spouses and children; and

WHEREAS, these pension improvement provisions did establish a guaranteed annual income level for veterans as well as for spouses and children; and

WHEREAS, after extensive study, The American Legion concludes that there are inequities in the improved pension program that require amendments; now, therefore, be it

RESOLVED, by The American Legion in National Convention assembled in Honolulu, Hawaii, September 1, 2, 3, 1981, that The American Legion support legislation to accomplish the following amendments to Chapter 15, title 38, United States Code:

1. (a) Amend section 541(b) to provide as follows: "If no child of the veteran is in custody of the surviving spouse, pension shall be paid to the surviving spouse at the annual rate of \$4,464 reduced by the amount of the surviving spouse's annual income." (b) Amend section 541(c) to provide as follows: "If there is a child of the veteran in the custody of the surviving spouse, pension shall be paid to the surviving spouse at the annual rate of \$5,849 reduced by the amount of the surviving spouse's annual income." (c) Amend section 541(d)(1) to provide as follows: "If a surviving spouse who is entitled to pension under subsection (b) of this section is in need of regular aid and attendance, the annual rate of pension payable to such surviving spouse shall be \$7,142 reduced by the amount of the surviving spouse's annual income." (d) Amend section 541(d)(2) to provide as follows: "If a surviving spouse who is entitled to pension under subsection (c) of this section is in need of regular aid and attendance, the annual rate of pension payable to the surviving spouse shall be \$8,527 reduced by the amount of the surviving spouse's annual income." (e) Amend section 541(e) to

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provide as follows: "If the surviving spouse is permanently housebound, but does not qualify for pension at the aid and attendance rate provided by subsection (d) of this section, the annual rate of pension payable to such surviving spouse under subsection (b) of this section shall be \$5,458 and the annual rate of pension payable to such surviving spouse under subsection (c) of this section shall be \$6,842 reduced by the amount of the surviving spouse's annual income."

2. Amend section 542 to provide as follows: (a) "Whenever there is no surviving spouse entitled to pension under section 541, pension shall be paid monthly to each child at the annual rate of \$4,145 reduced by the child's annual income."

3. Amend section 543 by deleting under subsection (b) the following: "the income of any person with whom such child is residing who is legally responsible for such child's support, and the corpus of the estate of such person."

4. Amend section 521(f)(1) through (5) to provide as follows: "If two veterans are married to one another and each meet the disability and service requirements prescribed in subsections (a) and (j) respectively, of this section, the rate of pension payable to each such veteran shall be at the annual rate of \$4,960 reduced by the amount of each such veteran's annual income. If either such veteran is in need of regular aid and attendance, the rate of pension payable to each such veteran shall be at the rate of \$4,960 and \$7,936 respectively, reduced by the amount of each such veteran's annual income. If either such veteran would be entitled to pension at the rate provided by subsection (e) of this section, the rate of pension payable to each such veteran shall be \$4,960 and \$6,064 respectively, and if both such veterans would be entitled to the rate provided by subsection (e) of this section, each shall be paid at the annual rate of \$6,064 reduced by the amount of each such veteran's annual income. If one such veteran is in need of regular aid and attendance, and the other would be entitled to the rate provided for under subsection (e) of this section, the annual rate provided by paragraph (1) of this subsection shall be \$7,936 and \$6,064 respectively."

5. Amend section 503 to exclude in the determination of annual income, payments under policies of Servicemen's Group Life Insurance, United States Government Life or National Service Life Insurance, and payments of Servicemen's Indemnity.

6. Amend section 3012(b)(4) to read as follows: "(4) By reason of change in income or corpus of estate shall be the last day of the calendar year in which the change occurred;".

APPROVED WITH AMENDMENT

SIXTY-SECOND ANNUAL NATIONAL CONVENTION OF THE AMERICAN LEGION
BOSTON, MASSACHUSETTS, AUGUST 19, 20, 21, 1980

RESOLUTION: No. 314 (Ohio)

COMMITTEE: Veterans Affairs and Rehabilitation

SUBJECT: Sponsor and support legislation to provide a seven year
presumption period for Syringomyelia

WHEREAS, Syringomyelia is a chronic progressive disease of the spinal cord and medulla characterized clinically by a dissociated sensory loss, muscular atrophy, trophic changes, and spasticity; and

WHEREAS, it is a slowly progressive disease; and

WHEREAS, because of its insidious onset, its early and accurate diagnosis is difficult; and

WHEREAS, in its progression Syringomyelia must be diagnostically differentiated from tumors of the spinal cord, amyotrophic lateral sclerosis, Multiple Sclerosis, and Tabes dorsalis; and

WHEREAS, under 38 USC 312 (a) (4), Multiple Sclerosis, also a chronic slowly progressive disease of the central nervous system, developing a 10 per centum degree of disability or more within seven years from date of separation from military, naval or air service, should be considered to have been incurred in or aggravated by such service, notwithstanding there is no record of evidence of such disease during the period of war service of 90 days or more; now, therefore, be it

RESOLVED, by The American Legion in National Convention assembled in Boston, Massachusetts, August 19, 20, 21, 1980, that The American Legion sponsor and support legislation to amend 38 USC 312 (a) so as to provide that Syringomyelia developing a 10 per centum degree of disability or more within seven years from the date of separation from a period of war service shall be considered to have been incurred in or aggravated by such service.

APPROVED

SIXTH-THIRD ANNUAL NATIONAL CONVENTION OF THE AMERICAN LEGION
HONOLULU, HAWAII, SEPTEMBER 1, 2, 3, 1981

RESOLUTION: No. 336 (Wisconsin)

COMMITTEE: Veterans Affairs and Rehabilitation

SUBJECT: Sponsor and support legislation to amend title 38, USC, to restore the payment of burial allowance; and to increase the burial allowance for veterans to \$400 plus the \$150 plot allowance

WHEREAS, the authorization for payment of burial allowance upon the death of a nonservice-connected veteran originated with the enactment of the "World War Veterans Act of 1924", Public No. 242 - 68th Congress; and

WHEREAS, the purpose of such an allowance is to enable the survivors or next of kin of the deceased veteran to arrange a funeral and burial consistent with the dignity and esteem in which war veterans are held; and

WHEREAS, burial allowance has been payable regardless of the income or social standing of the veteran at the time of death, consistent with The American Legion's philosophy of equal benefits for equal service; and

WHEREAS, Congress has adopted and the President has signed legislation to eliminate this benefit for most beneficiaries; and

WHEREAS, funeral expenses have increased considerably since the payment of burial allowance was increased from \$150 to \$300 as authorized by the Congress; and

WHEREAS, The American Legion rejects the proposition that the burial allowance provided to veterans through the Veterans Administration duplicates the Social Security burial allowance, because the Social Security burial allowance is an earned benefit to which the beneficiary has contributed through Social Security taxes, whereas the veterans burial allowance is a benefit provided in recognition of honorable service performed in the Armed Forces of the United States; and

WHEREAS, many families of veterans are in poor financial circumstances, having little or no means to provide a decent and respectable funeral for the veterans to which they are justly entitled; now, therefore, be it

RESOLVED, by The American Legion in National Convention assembled in Honolulu, Hawaii, September 1, 2, 3, 1981, that The American Legion sponsor and support legislation to amend title 38, United States Code, to restore the payment of burial allowance for all veterans who have served honorably in time of war or national emergency; and, be it further

RESOLVED, that The American Legion oppose any effort to associate with or substitute the veterans burial allowance with the Social Security burial allowance; and, be it finally

RESOLVED, that The American Legion sponsor and support legislation to increase the burial allowance for veterans to \$400 plus the \$150 plot allowance.

APPROVED WITH AMENDMENT



VETERANS OF FOREIGN WARS OF THE UNITED STATES

NATIONAL LEGISLATIVE SERVICE

Office of Director

STATEMENT OF

PHILIP R. MAYO, SPECIAL ASSISTANT
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO

LEGISLATIVE PROPOSALS TO AMEND THE COMPENSATION
AND PENSION PROGRAMS OF THE VETERANS ADMINISTRATION

WASHINGTON, DC

APRIL 22, 1982

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of our more than 1.9 million members, I would like to thank you for the opportunity to present the views of the Veterans of Foreign Wars of the United States with respect to various legislative proposals affecting the compensation and pension programs of the Veterans Administration.

The first bill under consideration today is HR 4308, introduced by the ranking minority member of the full committee, the Honorable John Paul Hammerschmidt, for the purpose of providing that progressive muscular atrophy on amyotrophic lateral sclerosis developing a 10 per centum or more degree of disability within seven years after separation from active service during a period of war shall be presumed to be service-connected. Although the VFW has been mandated in the form of a convention resolution to support such a legislative initiative in the past, no such action was



taken at our most recent national convention. As a result, therefore, we have no official position on HR 4308; however, we would not object to its passage into law.

The second measure under consideration today, HR 5144, introduced by the Honorable Thomas A. Daschle, would make members of the Senior Reserve Officers Training Corps (ROTC) programs who are injured during summer military camp eligible for compensation benefits administered by the Veterans Administration. Again, Mr. Chairman, no resolution addressing this issue was adopted by the delegates to our most recent national convention; consequently, we have no official position thereon. However, we would point out that under Titles 5 USC 8140 and 10 USC 2109, medical and compensatory benefits are already available to these individuals, and making such available under Title 38 USC would appear duplicative. In addition, it should be noted that Section 101(13), Title 38 specifies that the "term 'compensation' means a monthly payment made by the Administrator to a veteran (underscoring supplied) because of service-connected disability..." and that a veteran (Section 101(2), Title 38 USC) "means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable." Including those in the ROTC in these definitions would alter their meaning by including those who have not been sworn into service or who have not been or are not subject to the Uniform Code of Military Justice.

Mr. Chairman, the third bill under consideration today, HR 6039, introduced by yourself, would amend Title 38, USC to correct a technical error with respect to entitlement to dependency and indemnity compensation to clarify the interpretation of Section 410(b)(1). We have no objection to its passage.

The fourth bill, HR 6040, also introduced by yourself, would amend Title 38 USC to provide eligibility for burial benefits from the Veterans Administration for certain veterans whose remains are unclaimed. Mr. Chairman, the voting delegates to our most recent convention adopted Resolution No. 774 entitled, "Burial Benefit

Allowance," a copy of which is appended hereto, calling for the restoration of eligibility for the burial allowance for veterans that was eliminated during the first session of this Congress. We, therefore, would view the quick passage of HR 6040 as the first step toward restoring that entitlement for those 27 million veterans by insuring that wartime and certain other veterans whose remains are held by a state or local government in an unclaimed status, or whose estate is insufficient to defray the costs of burial, may be buried at the expense of the Veterans Administration.

Mr. Chairman, the fifth piece of legislation under consideration, HR 6041, introduced again by yourself, would authorize the Administrator of Veterans' Affairs to furnish a burial flag to the next of kin of persons who are buried in Arlington National Cemetery or in national cemeteries administered by the Veterans Administration but who are not currently eligible for burial flags. As you know, Section 1002 (6) Title 38 USC provides that the Administrator is permitted to authorize the interment of certain persons or groups of persons as he deems appropriate. While this section of Title 38 provides that those who have rendered a long or distinguished service to our nation, but who are not veterans, such as a career diplomat or a Justice of the Supreme Court, may be buried in a national cemetery with the permission of the Administrator, it does not authorize the Administrator to furnish the burial flag utilized in that ceremony to the decedent's next of kin. While we have no official position concerning this measure, we would note that such an honor has historically been conferred exclusively upon the next of kin of veterans.

The final measure under consideration, Mr. Chairman, is HR 5709, introduced by the Chairman of the Full Committee, the Honorable G. V. Montgomery, at the request of the Administration. The bill provides for an 8.1 percent cost of living increase in the rates of compensation and dependency and indemnity compensation; for the discontinuance of duplicative payments to certain veterans; for the increase in the

level of disability required for the payment of dependent's allowance; and for various cost saving modifications in veterans programs. Mr. Chairman, we support the cost of living increases in the compensation and dependency and indemnity compensation programs, realizing that the proposed increase for such was made in January of this year and that some adjustment may occur therein by the date of enactment. We would suggest, however, that the proposals made recently by the full Veterans' Affairs Committee to the Budget Committee be considered as a substitute for the remainder of this measure. Those recommendations are much more evenhanded and realistic and occur in program areas that maintain the integrity of those programs. We would like to commend this Subcommittee and the Full Committee for their continued responsiveness to the needs of veterans during these times to budgetary constraint.

In addition to the foregoing, Mr. Chairman, the VFW was asked to comment upon a proposed legislative measure providing that payment of veterans' compensation, dependency and indemnity compensation, and pension shall be suspended in a case in which the beneficiary has received another financial settlement for the same injury until the amount of the settlement has been recouped. Although we have no Convention Resolution dealing with this issue specifically, the voting delegates to our most recent National Convention did adopt Resolution No. 687 entitled, "Oppose Curtailment or Elimination of Earned Veterans Benefits and Privileges", a copy of which is appended hereto for your review. Mr. Chairman, we would view the implementation of this proposal as a curtailment and an elimination of compensation and DIC benefits. Those benefits have not been subjected to a "needs" test heretofore, and this measure, we believe, would accomplish such. In addition, it is well documented within the annals of this Subcommittee that the VFW has opposed the offsets to veterans benefits that are currently in law, and we view this proposed measure as the precursor of additional offsets, notwithstanding those specifically formulated therein. Therefore, we are opposed to the introduction and passage of this measure.

Again, Mr. Chairman, the VFW appreciates the interest of this Subcommittee in maintaining the integrity of veterans' benefits programs for those who have rendered a great service to our nation.

This concludes my statement, and I would be happy to respond to questions you may have at this time.

Resolution No. 774

BURIAL BENEFIT ALLOWANCE

WHEREAS, Congress has limited the \$300 burial and funeral expense benefit only to those deceased veterans who were in receipt of VA compensation or pension; and

WHEREAS, burial benefits would be denied to nearly 27 million previously eligible veterans; and

WHEREAS, a veteran who honorably served his/her country during periods of war and hostility has earned the right to a proper and respectful burial; now, therefore

BE IT RESOLVED, by the 82nd National Convention of the Veterans of Foreign Wars of the United States that we seek the introduction and enactment of legislation to restore the burial benefit allowance for all veterans thereby underscoring the value of their special service to their nation.

Adopted by the 82nd National Convention of the Veterans of Foreign Wars of the United States held in Philadelphia, Pennsylvania, August 14-20, 1981.

Resolution No. 774

Resolution No. 697

OPPOSE CURTAILMENT OR ELIMINATION OF EARNED VETERAN BENEFITS AND PRIVILEGES

WHEREAS, there is a growing trend toward reduction of the earned benefits and entitlements of veterans, their dependents and survivors which were explicitly promised or provided by law or regulation in recognition of the hardships and dangers of service life; and

WHEREAS, the erosion of the earned benefits and entitlements are detrimental to the morale of veterans, active, reserve, and retired; and

WHEREAS, the continued erosion and reduction of earned benefits and entitlements will adversely affect maintaining an effective and efficient military force needed for the security of the United States; now, therefore

BE IT RESOLVED, by the 82nd National Convention of the Veterans of Foreign Wars of the United States, that we support all reasonable measures which are beneficial to veterans, their dependents and survivors, and

BE IT FURTHER RESOLVED, that we oppose all efforts by any individual, group, organization, government office, bureau or agency, or the United States Congress to discriminate against a veteran, discharged under honorable conditions, or to eliminate or curtail in any manner their earned benefits or privileges.

Adopted by the 82nd National Convention of the Veterans of Foreign Wars of the United States held in Philadelphia, Pennsylvania, August 14-20, 1981.

Resolution No. 697

PREPARED STATEMENT OF HON. CHRISTOPHER H. SMITH, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF NEW JERSEY

Good morning! I would like to thank the Chairman for the opportunity to appear here today to discuss what I consider to be some major inequities in Title 38, Section 314 that treat blinded veterans unfairly.

I plan to introduce legislation today that would correct two of these inequities. First, I will introduce legislation that would classify totally blinded veterans without light perception under subsection "n" of the current schedule instead of subsection "m" where they are now rated. This would equalize benefits for totally blinded veterans without light perception with those who have suffered the enucleation of the eyes or deformity or scarring. In the case of the loss of extremities, the code already provides not only for the "loss of" the extremities but also for the "loss of use of" the extremities. I believe the same standard should apply to those veterans who have lost their vision. A totally blinded veteran without light perception has suffered the total "loss of use of" his eyes and, therefore, he should be rated the same as someone who has suffered the anatomical loss of his eyes. Medical experts also can attest to the more severe nature of blindness without light perception. Light perception is an important aspect of balance, for example, and the loss of light perception can make blindness a more debilitating condition.

Additionally, I plan to introduce legislation that would amend the schedule to provide additional compensation for blinded veterans who also have incurred losses in hearing and/or suffered loss of extremities. Even a minor hearing loss in a blinded veteran is a greater hardship than if that hearing loss affected someone who was not blinded. Currently, hearing losses are evaluated by the VA as if they occurred in someone who was not blind.

In the case of a blinded veteran who has lost an extremity, he has essentially lost contact with the world around him. The loss of a tactile sense in someone who is blind is a serious situation and should be judged so by the VA.

Both of these bills which I will introduce today are cost-effective measures. Neither would exceed \$1 million—a small amount considering the group that would be helped.

Both bills would make minor changes to the schedule and impact on a small minority of veterans—service-connected veterans who incurred their disabilities in defense of their Nation.

Mr. Chairman, I do not need to stress before this Committee the great sense of commitment this nation has to its service-connected veterans. Our veterans served their country when they were most needed. And we should never forget the great sacrifice they have made.

I believe that the two provisions which I have cited today that impact harshly on blinded veterans are simple oversights in the current schedule. They were not instituted to treat blinded veterans unfairly, but their effect is the same.

I would also like to take this opportunity to invite you to a briefing this afternoon at 1 PM on the two bills that I will introduce. Mr. Skip Sharpe, President and Chairman of the Board of Directors of the Blinded Veterans Association and Mr. S. A. Vale, Acting Executive Director, will be present along with the co-sponsors of the legislation, Albert Lee Smith and Joseph Smith to answer any questions that you might have.

Again, thank you very much for the opportunity to appear before you today.

STATEMENT OF HON. TOM DASCHLE, A REPRESENTATIVE IN CONGRESS FOR THE STATE
OF SOUTH DAKOTA

Mr. Chairman, I appreciate your willingness to allow me to submit testimony today and also to hold legislative hearings on H.R. 5144. I will limit my comments to this bill.

H.R. 5144 corrects what I believe to be an unfortunate anomaly in title 38 of the U.S. Code pertaining to the treatment of members of the Reserved Officer's Training Corps (ROTC) who may be injured while en route to or in summer camp training exercises. Currently, there is no authority to compensate ROTC personnel who may be injured en route to summer camp despite the fact that they are under military orders. Yet, if the individual dies in the accident, his widow and survivors would be entitled to dependency and indemnity compensation (DIC) through the VA. If the individual survives, however, he is only eligible for Federal Employees Compensation (section 8104 of Title 5, U.S. Code), which needless to say is at a much lower rate than VA compensation.

Mr. Chairman, I wish to cite the very case which brought this inequity to my attention. It involves a man named Richard Oeschley, who was involved in a tragic auto accident on his way to summer camp for ROTC training which left him blind in both eyes. Since that time, Rich has suffered from epilepsy and spinal meningitis, both of which doctors attribute to the injuries he suffered in the accident. Even though he was under Army orders, Rich has been forced to shoulder massive hospital and medical bills on his own. Ironically, even though he has been determined to be ineligible for veterans benefits, Rich is a volunteer worker at the Sioux Falls VA hospital.

It is difficult to ascertain just how many patriotic young Americans like Rich have been adversely affected by this loophole in the law, but I feel it is important that these individuals are eligible for compensation and medical treatment for any injuries or disabilities they incur while under military orders.

STATEMENT OF HON. JOSEPH F. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF PENNSYLVANIA

Mr. Chairman, I commend this Committee for considering legislation to provide burial benefits for certain veterans. I sincerely feel, however, that full benefits should be restored as provided in the old law rather than a provision just for a few veterans.

I realize this change came about because of the need to reduce the budget. However, if this Congress turns its back on one deserving veteran, then it is the same as forgetting all veterans. We have a deep responsibility and duty to all veterans who have invested so much in the service of our country.

In Philadelphia there were recently cases of deserving veterans who were unable to receive a proper burial because of the change in federal death benefits. One of these bodies was held for burial since December 1981. Fortunately, a group of concerned Philadelphia veterans headed by Mr. Charles Duld with the Veterans Advisory Commission of Philadelphia arranged to have these forgotten soldiers buried last week in flag-draped coffins during a short ceremony in Veterans Garden in Philadelphia.

It is my understanding you expect that there will be approximately 300 veterans per year who will pass away without funds to pay for their burial expenses. These are veterans who would have been entitled to a pension had they applied but for some reason failed to do so. Now, because of the recent law which states that they have to be in receipt of pension or compensation benefits rather than just entitled to them, the burial allowance is not paid.

While this legislation makes some progress in providing certain veterans with burial benefits, it is not enough. I strongly believe that these benefits should be completely restored. We must not fall short with federal funds when the integrity of the U.S. veteran is at stake.

STATEMENT OF HON. CHALMERS WYLIE, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF OHIO

Thank you, Mr. Chairman, the hearing this morning presents an opportunity for our subcommittee to concern itself with benefits for service-connected veterans. These benefits deserve to have—and do have—the highest priority with all of our members and indeed with all of the Congress.

I note, Mr. Chairman, that the administration proposes a cost-of-living increase in compensation for service-connected disabled veterans, their dependents and survivors. The increase would be effective on October 1, 1982. There is no doubt in my mind that this subcommittee, the full committee and the entire Congress will approve this proposal, and I look forward to Miss Starbuck's testimony in this regard.

Mr. Chairman, the bill before us calls for an 8.1 percent increase. That percentage figure was based on a projection made sometime ago and may be higher than the actual increase in the cost of living. In this connection, I am aware that several of the witnesses will testify this morning that while they support an increase in compensation they would not be displeased if it were less than 8.1 percent if the rise in the cost of living since the last congressional action in this regard was in fact less than 8.1 percent. I think this a most responsible position and I think that it shows that our veterans organizations and their members want to involve themselves in the struggle to bring the cost of Government under control. I congratulate these witnesses for their constructive attitude.

Mr. Chairman, when we recently marked up our resolution for the Budget Committee, many of us stated our great concern about some proposed reductions in service-connected benefits. I refer to the proposal to eliminate dependents' allowances in those cases where vocational rehabilitation is being pursued, the proposal to eliminate such allowances in cases where disabled veterans are rated at the 30 percent and 40 percent levels, and the proposal to reduce some so-called "unemployability cases" where the veteran is rated at the 100 percent level. The concern I had at the markup session remains and I do not feel that it will diminish. I am certain that we will hear about these proposals this morning.

Mr. Chairman, I see that we have a lot of old friends here this morning, and I look forward to hearing from them. I repeat that service-connected veterans are the prime concern of all of us, and the history of our actions over the years would indicate that we do not take our responsibilities lightly with respect to them.

Thank you, Mr. Chairman.

